UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
BALLSTON BUILDING NO. 3, 4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

Secretary of the Interior Thomas S. Kleppe

Office of Hearings and Appeals -- James R. Richards, Director

Office of the Solicitor ---------- Kent Frizzell, Solicitor

INDEX-DIGEST

JANUARY - DECEMBER 1975

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1975, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203 and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

Decisions and opinions cited as appearing in 82 I.D. are published and copies may be obtained by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Other decisions and opinions are unpublished and copies may be obtained from the Office of Hearings and Appeals or the Office of the Solicitor as provided in 43 CFR Part 2.

Editor: Vera E. Burgin; Compositors: Annis K. Olsen, Eric Matt Stout --1976.

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IBCA - Interior Board of Contract Appeals
IBIA - Interior Board of Indian Appeals
IBLA - Interior Board of Land Appeals
IBMA - Interior Board of Mine Operations Appeals
M - Solicitor's Opinion
OHA - Office of Hearings and Appeals

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Stephen H. Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's. report adverse to U.S. issued December 16, 1970; Chief Commr's. report concurring with the Trial Commr's. report issued April 13, 1971. P.L. 92-108 enacted accepting the Chief Commr's. report.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (December 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; rev'd. and remanded with direction to enter judgments for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. and Osro Cobb v. U.S., Civil No. 967, W. D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed, January 17, 1966.

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah and Abram Cohen v. U.S., Civil No. 3158, D. R. I. Compromised.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson, et al. v. Stewart L. Udall, Civil No. 63-26-Civ.-Oc, M. D. Fla. Dismissed with prejudice, 278

F. Supp. 826 (1968); aff'd., 428 F. 2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil No. 1960-72. Dismissed with prejudice, February 7, 1974; Per curiam decision, aff'd., January 24, 1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil No. 3233-56. Judgment for defendant, January 9, 1958; appeal dismissed for want of prosecution, September 18, 1958, D. C. Cir. No. 14,647.

Commercial Metals Co., IBCA-99 (August 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Appeal by the Confederated Salish & Kootenai Tribes of the Flathead Reservation, in the Matter of the Enrollment of Mrs. Elverna Y. Clairmont Baciarelli, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v. Rogers C. B. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, August 27, 1971; aff'd., 481 F. 2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co., et al., A-30760 (September 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, March 20, 1970; reconsideration denied, May 20, 1970.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall, et al., Civil No. 366-62. Judgment for defendant, April 29, 1966; aff'd., February 10, 1967; cert. denied, 389 U.S. 839 (1967).

Autrice C. Copeland, See Leslie N. Baker, et al.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhoff, 80 I.D. 301 (1973)

Edward D. Neuhoff & E. L. Cord v. Rogers C. B. Morton, Secretary of the Interior, Civil No. R-2921, D. Nev. Dismissed, September 12, 1975 (opinion); appeal docketed, November 14, 1975.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil No. A-5-72, D. Alas. Judgment for defendant, March 23, 1973; aff'd., September 3, 1974; no petition.

William D. Cornia, et al., Wyoming 4-63-1, etc., Utah 1-63-1, etc., (August 25, 1965)

William D. Cornia, et al. v. Stewart L. Udall, Civil No. 4-66, N. D. Utah. Dismissed with prejudice, September 1, 1967.

Cortella Coal Corp., et al., Alaska Mineral Exploration Co., 13 IBLA 158 (1973)

Cortella Coal Corp. & Alaska Mineral Exploration Co. v. Curtis V. McVee, State Dir., Bureau of Land Management, State of Alaska, Burton W. Silcock, Dir., Bureau of Land Management & Rogers C. B. Morton, Secretary of the Interior, Civil No. A-169-73, D. Alas. Dismissed with prejudice, January 13, 1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co., et al. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued March 19, 1971.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, individually & in his official capacity as Secretary of the Interior & his successors in office, et al., Civil No. 74-0-189, D. Neb. Suit pending.

Elizabeth Barndt Crouse, et al., A-30542 (March 7, 1968)

Elizabeth Barndt Crouse, et al. v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, April 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S. & Rogers C. B. Morton, Civil No. F-27-71 Civ., D. Alas. Dismissed, July 13, 1972; no appeal.

Estate of George Daniels, IA-1295 (November 2, 1965)

Elizabeth Daniels, et al. v. Johnson, Supt., Osage Indian Agency & Udall, Civil No. 6443, N. D. Okla. Dismissed with prejudice, Jan. 9, 1967.

Oma Belle Day, et al., AA-5702 (December 30, 1969)

Oma Belle Day v. Walter J. Hickel, et al., Civil No. A-9-70, D. Alas. Judgment for defendant, February 19, 1971; aff'd., 481 F. 2d 473 (9th Cir. 1973); no petition.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd., 259 F. 2d 780 (1958); cert. denied, 358 U.S. 385 (1958).

The Dredge Corp., 64 I.D. 368 (1957) 65 I.D. 336 (1958)

The Dredge Corp. v. J. Russell Penny, Civil No. 475, D. Kev. Judgment for defendant, September 9, 1964; aff'd., 362 F. 2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P. 2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Eastern Associated Coal Corp., 82 I.D. 22 (1975)

International Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, United States Ct. of Appeals, D. C. Cir. Dismissed by Stipulation, October 29, 1975.

Eastern Associated Coal Corp., 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, United States Ct. of Appeals, D. C. Cir. Petition for Review withdrawn, July 28, 1975.

Lawrence Edwards, A-30696, A-30705 (April 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd. & remanded, November 18, 1968; stipulation for dismissal & order filed August 4, 1970.

Henry J. Ernst, A-27196 (November 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alas. Return of service quashed & complaint dismissed, December 28, 1956 (opinion); aff'd., 244 F. 2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (April 10, 1970), 1 IBLA 269; 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd., March 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 82768, E. D. Cal. Dismissed with prejudice, December 3, 1973 (opinion); no appeal.

John J. Farrelly, et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, October 11, 1955; no appeal.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior et al., Civil No. 75-404-Civ-T-K, M. D. Fla. Dismissed without prejudice, July 16, 1975.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand and Flora Rondeau for themselves and all others similarly situated, and Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves and all others similarly situated v. Rogers C. B. Morton, et al., Civil No. A75-42, D. Alas. Suit pending.

Carl E. Forsberg, et al., A-29158 et al., (August 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Stewart L. Udall.

Robert K. Foster, et al., A-29857 (June 15, 1964)

Robert K. Foster, et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S. D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D. N. M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co., et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, August 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer, et al., A-29221 (April 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton, et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, November 14, 1972.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall, et al., Civil No. 2818 ND, S. D. Cal. Dismissed with prejudice, February 15, 1967; aff'd., 396 F. 2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, December 1, 1961; aff'd., 315 F. 2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (October 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, January 17, 1969; no appeal.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, November 27, 1961; no appeal.

Estate of Gei-kaun-mah (Bert), 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene Geikaunmah Carter v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CIV 75-1010-E, W. D. Okla. Suit pending.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, December 16, 1963.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, August 3, 1961; aff'd., 309 F. 2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (April 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, January 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D. N. M. Judgment for defendant, June 4, 1964; aff'd., 352 F. 2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (March 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D. N. M. Dismissed with prejudice, November 12, 1963.

John Gonzales, A-30604 (September 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alas. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, November 30, 1972.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, November 29, 1975 (opinion).

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw, et al. v. Secretary, Civil No. 68-317, W. D. Okla. Dismissed, February 4, 1969; no appeal.

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by and through their next friend and Guardian Ad Litem, Dale Running Bear v. Rogers Morton, individually and as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Suit pending.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, October 19, 1962; aff'd., 325 F. 2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. and Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-2396, Section F, E. D. La. Suit pending.

Gustav Hirsch Organization, Inc., IBCA-175 (October 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955), IBCA-22 (Supp.) (March 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed September 11, 1958. Compromised offer accepted and case closed October 10, 1958.

L. H. Hagood, et al., 65 I.D. 405 (1958)

Edwin Still, et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

William Hall, et al., A-30849, A-30852, A-30857 (September 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alas. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (September 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N. D. Cal. Judgment for defendant, December 13, 1963 (opinion); judgment entered February 11, 1964; appeal docketed February 14, 1964; dismissed by plaintiff, March 20, 1964.

Raymond J. Hansen, et al., 67 I.D. 362 (1960)

Raymond J. Hansen, et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (March 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S. D. Cal. Dismissed, September 30, 1965; amended complaint filed November 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, November 15, 1967; judgment for defendants, March 26, 1968; rev'd., 427 F. 2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S. D. Cal. Dismissed, December 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, December 7, 1973; motion for new trial denied, February 6, 1974; no appeal.

Paul Harvey, et al. A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D. N. M. Judgment for defendant, January 25, 1967; aff'd., 384 F. 2d 883 (10th Cir. 1967); no petition.

Billy K. Hatfield, et al. v. Southern Ohio Coal Co., 82 I.D. 289 (1975)

District 6 United Mine Workers of America, et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals, No. 75-1704, U.S. Court of Appeals, D. C. Cir. Suit pending.

Headwaters Association, Protestant-Appellant Cabax Mills, et al., Intervenors, IBLA 76-68 remanded to Bureau of Land Management by Order, October 21, 1975; Appeal of Harold P. Canady et al., IBLA 73-357, pending; Appeal of Elizabeth Freeman, IBLA 76-51, pending; Appeal of Alan Troxler, IBLA 74-215, pending; Appeal of Alan Winter et al., IBLA 75-653, pending; Appeal of Carl Wittman, IBLA 76-14, pending.

Arthur Downing, Alan Winter, Alan Troxler and Headwaters v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. 75-1128, D. Ore. Suit pending.

Kenneth Holt, an individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; Per curiam decision, aff'd., April 28, 1966; no petition.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. Rogers Morton, Secretary of the Interior, Civil No. A74-56, D. Alas. Dismissed with prejudice, October 16, 1975 (opinion); no appeal.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565, (Order of dismissal dated February 22, 1973), reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, December 17, 1974; aff'd., January 28, 1976.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Suit pending.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd. and remanded for further administrative proceedings, January 14, 1976 (opinion).

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965), U.S. v. Ollie Mae Shearman, et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed, et al. v. Dept. of the Interior, et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, September 3, 1965; dismissed, November 10, 1965; amended complaint filed, September 11, 1967.

U.S. v. Raymond T. Michener, et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp., et al., Civil No. 1-67-97, S. D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd., 480 F. 2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973).

Appeal of Inter Helo, Inc., IBCA-713-5-[illegible] (December 30, 1969), 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, March 27, 1968.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Suit pending.

J. A. Jones Construction Co., et al., IBCA-233 (June 17, 1960)

Palisades Contractors, et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F. 2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen, et al., IBCA-363 (March 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W. D. Wash. Judgment for defendant, February 24, 1964; no appeal.

Dale Johnson, A-30806 (September 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alas. Stipulated Dismissal, April 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971), U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Suit pending.

Kenneth J. Kadow, et al., A-30053 (October 5, 1964)

Kenneth J. Kadow, et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alas. Judgment for defendant, September 7, 1967; dismissed for lack of prosecution, February 2, 1968; no petition.

R. A. Keams, A-30183 (February 16, 1965)

R. A. Keans v. Stewart L. Udall, et al., Civil No. 2648-ND, S. D. Cal. Defendant's motion to dismiss granted, November 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (September 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W. D. Okla. Aff'd., 265 F. Supp. 848 (1967); aff'd., 404 F. 2d 97 (10th Cir. 1968); no petition.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., and Case-Pomeroy Corp., 6 IBLA 108 (1972), Petition for Reconsideration denied, May 14, 1974.

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton, et al., Civil No. 616-72. Dismissed with prejudice, October 22, 1974; appeal docketed, November 1, 1974.

John J. King, A-28543 (October 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 60-61. Judgment for plaintiff, November 8, 1961; rev'd., 308 F. 2d 650 (1962); no petition.

John J. King, et al., Fairbanks 033268, 033279 (September 25, 1964)

John J. King, et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577 (October 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alas. Dismissed with prejudice, April 24, 1968.

Barbara G. Kirk and Marjorie G. Wright See Dean Kirk

Dean Kirk, A-29018a (April 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (August 20, 1963)

George M. Larsen, et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Anquita L. Kluenter, et al., A-30483, November 18, 1965
See Bobby Lee Moore, et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall, et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd., 432 F. 2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (December 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall, et al., Civil No. 6567, D. Ariz. Judgment for defendant, January 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, September 4, 1974; dismissed, September 11, 1975.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R. R., A-29121 (January 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R. R. v. Udall, et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd., 432 F. 2d 254 (9th Cir. 1970); no petition.

Bureau of Land Management, Appellant, Diamond Ring Ranch, Appellee & Bureau of Sport Fisheries & Wildlife, Amicus Curiae, 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, December 20, 1974.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, March 6, 1963; aff'd., 324 F. 2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

Langdon H. Larwill, et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd., 406 F. 2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F. 2d 782 (1969); no petition.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 674-64. Judgment for defendant, October 5, 1964; appeal voluntarily dismissed, March 26, 1965.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd., 427 F. 2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Perley M. Lewis and Mildred C. Lewis, A-28707 (December 30, 1963)

Perley M. Lewis, et ux. v. Stewart L. Udall, et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, March 22, 1966; aff'd., 374 F. 2d 189 (9th Cir. 1967); no petition.

Milton H. Lichtenwalner, et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alas. Dismissed on merits, April 24, 1964; stipulated dismissal of appeal with prejudice, October 5, 1964.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co., et al. v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain which see. Stipulated dismissal on appeal, October 13, 1966.

Merwin E. Liss, et al., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; per curiam dec., aff'd., April 28, 1966; no petition.

Leland M. Lucas, A-29228 (December 10, 1962)

Leland Murray Lucas v. Stewart L. Udall, et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, October 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, 1 IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton, et al., Civil No. 9585, D. Wash. Judgment for defendant, January 14, 1972; aff'd., February 26, 1974; no petition.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey, et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, December 10, 1970; no appeal.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71 Judgment for defendant, 353 F. Supp. 1001 (1973); aff'd., 494 F. 2d 1156 (1974); no petition.

Sheridan L. McGarry, A-28759 (January 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 no petition.

Joseph MacIsaac, et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley F. Cornelius, Hillen L. Arnold, Henry E. Reeves, Starling F. Cornelius, Richard Ransom v. Rogers C. B. Morton, Civil No. A-6-73, D. Alas. Dismissed with prejudice for want of prosecution by plaintiff, December 19, 1974.

Elgin A. McKenna, Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, February 14, 1968; aff'd., 418 F. 2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9633, D. Ore. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd., 289 F. 2d 908 (9th Cir. 1961).

Estate of Alvina Beauvois McLean, IA-D-27 (February 14, 1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D. C. Judgment for defendant, March 13, 1970; dismissed for lack of prosecution, April 9, 1971.

Wade McNeil, et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd., 281 F. 2d 931 (1960); no petition.

Wade McNeil v. Albert K. Leonard, et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); order, April 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for

defendant, December 13, 1963 (opinion); aff'd., 340 F. 2d 801 (1966); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (April 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, February 6, 1969 (opinion); no appeal.

J. W. McTiernan, 11 IBLA 284 (1973)

J. W. McTiernan v. Marvin Franklin, Acting Secretary of the Interior, Civil No. 73-481-B, W.D. Okla. Dismissed, April 4, 1974; aff'd., January 7, 1975.

J. W. McTiernan, 14 IBLA 369 (1974)

J. W. McTiernan v. Rogers C. B. Morton, Secretary of the Interior, Civil No. FS-74-42-C, W.D. Ark. Suit pending.

Marathon Oil Co., 81 I.D. 447 (1974), Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-181, D. Wyo.

Actions consolidated; judgment for plaintiff, December 11, 1975; notice of appeal filed in Civil Nos. C 74-179 & 180.

Estate of Andrew Jackson Marsh, 4 IBLA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly known as "Frank Ling" v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-200, E.D. Wash. Suit pending.

Appeal of Roy L. Matchett, IBCA-826-2-70 (February 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dismissed with prejudice, September 25, 1973.

Billy Mathis, et al., A-30512 (July 6, 1966)

Billy Mathis, et al. v. Stewart L. Udall, et al., Civil No. 6833, D. N.M. Dismissed with prejudice, January 6, 1967; rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (January 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, March 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-I-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, February 8, 1967.

Allan E. Mecham, et al., A-30244 (December 23, 1964)

Allan E. Mecham, et al. v. Stewart L. Udall, et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd., 369 F. 2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, November 16, 1959; motion for reconsideration denied, December 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tuc., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered September 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F. 2d 548 (1975).

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, September 30, 1974; appeal docketed, April 14, 1975.

Donald E. Miller, 2 IBLA 309 (1971), 15 IBLA 95 (1974)

Donald E. Miller v. Walter J. Hickel, et al., Civil No. C-70-2328, D. Cal. Remanded to the Department for further proceedings, July 5, 1973; dismissed with prejudice, February 6, 1975.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, February 23, 1961; aff'd., 307 F. 2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (August 10, 1959), A-28093 et al. (October 30, 1959), A-28133 (December 22, 1959), A-28378 (August 5, 1960), A-28258 et al. (February 10, 1960).

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28057 (October 16, 1959), A-28398 (August 31, 1960), A-28359 (July 18, 1960), A-28433 (August 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959), A-27810 (January 16, 1959).

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, April 4, 1963; aff'd., per curiam dec., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28528 et al. (February 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28172 (February 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28509 (October 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (January 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, September 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (January 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, November 21, 1962 (opinion); appeal dismissed April 12, 1963.

Duncan Miller, A-29231 (February 5, 1963) See Lucille S. West, Duncan Miller, et al.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, April 21, 1966; no appeal.

Duncan Miller, A-28937 (September 25, 1962), A-29041 (November 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May, 1966.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (August 29, 1963), & A-29633 (September 5, 1963).

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, October 2, 1967; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (March 5, 1964), A-30067 (March 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (April 8, 1964), A-30192 (April 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, September 28, 1965; no appeal.

Duncan Miller, A-30122 (September 23, 1964), A-30451 (November 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, February 15, 1966; dismissed, April 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, November 15, 1965; aff'd., 368 F. 2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, October 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed April 12, 1968; petition for mandamus denied, October 14, 1968.

Duncan Miller, A-30517 (April 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, August 11, 1966; appeal dismissed, September 14, 1967.

Duncan Miller, A-30570 (August 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alas. Judgment for defendant, March 13, 1967; motion for reconsideration denied, September 19, 1967; no appeal.

Duncan Miller, A-30546 (August 10, 1966), A-30566 (August 11, 1966), & 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, April 17, 1967; no appeal.

Duncan Miller, A-30669 (November 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, April 25, 1969; no appeal.

Duncan Miller, A-30628 (November 16, 1966), A-30684 (January 19, 1967), A-30708 (November 16, 1966), A-30797 (September 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D. N.M. Dismissed with prejudice, August 28, 1968; motion to set aside judgment denied, September 24, 1968; motion for reconsideration denied, November 4, 1968.

Duncan Miller, A-30891 (March 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, October 14, 1968; no appeal.

Duncan Miller, A-30924 (November 13, 1968), A-30934 (November 22, 1968), A-30966 (October 29, 1968), A-31054 (August 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, January 6, 1972; motion for reconsideration denied, February 7, 1972.

Duncan Miller, A-31087 (February 4, 1970), A-31095 (February 2, 1970), A-31148 (March 2, 1970), A-31159 (March 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, January 4, 1971; no appeal.

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, November 2, 1973; motion for rehearing denied, November 14, 1973; appeal dismissed, February 8, 1974.

Duncan Miller, 6 IBLA 283 (1972), 6 IBLA 507 (1972), 7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, February 7, 1973; motion to set aside judgment denied, March 5, 1973.

Duncan Miller, 7 IBLA 343 (1972), 16 IBLA 24 (1974), 16 IBLA 71 (1974), 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Department of the Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, December 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, October 31, 1974; motion to amend complaint denied, December 18, 1974.

Duncan Miller v. Adjudicate Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Administrative Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, October 30, 1973; motions for reconsideration denied respectively, December 4, 1973, January 4, 1974, & April 5, 1974; appeal dismissed, August 27, 1975; motion for rehearing denied, August 27, 1975; motion for reconsideration denied, November 6, 1975; application for extension of time to file writ of certorari filed.

Duncan Miller, 12 IBLA 199, 201, 206 (1973), 73 IBLA 319, 406, 407, 410, 411, 412, 74 IBLA 12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Department of the Interior, Civil No. 1929-73. Dismissed, February 15, 1974; appeal dismissed, August 27, 1975; motion for rehearing denied, August 27, 1975; motion for reconsideration denied, November 6, 1975; application for extension of time to file writ of certorari filed.

Duncan Miller, 12 IBLA 201 (1973), 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974), Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Department of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, October 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), IBLA 75-379 (dismissed by order, March 20, 1975), IBLA 75-365 (dismissed by order, March 24, 1975).

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-0905. Suit pending.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), 21 IBLA 50 (1975), 22 IBLA 52 (1975), IBLA 75-379 (dismissed by order, March 20, 1975), IBLA 75-365 (dismissed by order, March 24, 1975), IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by orders, April 30, 1975), IBLA 75-278 (dismissed by order, May 22, 1975).
See also Evelyn R. Robertson.

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-2138. Suit pending.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan, et al. v. Warren J. Gray, et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, November 13, 1967; aff'd., 413 F. 2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough, et al., Civil No. C-200-63, D. Utah. Judgment for defendant, January 8, 1964; no appeal.

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083, (9th Cir.). Dismissed for lack of jurisdiction, April 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, April 11, 1974.

Bobby Lee Moore, et al., 72 I.D. 505 (1965) Anquita L. Kluenter, et al., A-30483 (November 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration, et al., Civil No. 3253, S.D. Cal. Judgment for defendant, April 12, 1965; aff'd., 377 F. 2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan, et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, February 20, 1961 (opinion); aff'd., 306 F. 2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r., 345 F. 2d 833 (1965); Commr's. report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F. 2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on October 6, 1969; judgment for plaintiff, February 17, 1970.

Glenn Munsey, Earnest Scott, & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 208 (1972)

Glenn Munsey, Arnold Scott, & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-2095, United States Court of Appeals for the District of Columbia Circuit. Suit pending.

Navajo Tribe of Indians, State of Utah, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo, & Frederick Fishman, members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (October 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alas. Judgment for defendant, September 17, 1965; aff'd., 385 F. 2d 177 (9th Cir. 1967); no petition.

Robert D. Nininger, Appellant, Paul C. Kohlman, Appellee, 16 IBLA 200 (1974)

Robert D. Nininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, March 20, 1975; no appeal.

Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, September 17, 1965; rev'd. & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren, et al., rev'd. & remanded, 370 F. 2d 865 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Comm'r's. report adverse to U.S. issued December 10, 1971; judgment for plaintiff, 458 F. 2d 64 (1972).

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, November 15, 1963; case reinstated, February 19, 1964; remanded, April 4, 1967; rev'd. & remanded with directions to enter judgment for appellant, 389 F. 2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn By Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alas. Withdrawn April 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alas. Dismissed, April 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alas. Dismissed, October 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alas. Dismissed, October 29, 1963 (oral opinion); aff'd., 332 F. 2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alas. Dismissed without prejudice, March 2, 1964; no appeal.

Estate of Rose Old Bear Wilson, 4 IBIA 62, (1975)

James Harold Kindness & Sherman Wilson, Jr. v. Kent Frizzell, Acting Secretary, Department of the Interior, Civil No. 75-76-Blg, D. Mont. Suit pending.

Old Ben Coal Co., 81 I.D. 428, 81 I.D. 436, 81 I.D. 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals, et al., Nos. 74-1654, 74-1655, 74-1656, United States Court of Appeals for the 7th Cir. Board's decision aff'd., June 13, 1975; reconsideration denied, June 27, 1975.

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, United States Court of Appeals, D.C. Circuit. Suit pending.

Susie Ondola, 17 IBLA 359 (1974)
See Virginia Gail Atchison.

George Ondola, 17 IBLA 363 (1974)
See Virginia Gail Atchison.

Joseph I. O'Neill, Jr., A-30488 (April 19, 1966), A-30488 (Supp.) (December 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Remanded to the Dept. for clarification of Departmental decision, August 12, 1966; order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of the affirmance of the Departmental decision, March 8, 1967; no appeal; stipulated dismissal, November 22, 1971.

Oyate Inc., et al., IA-2629 (Still pending)

Oyate, Inc, a non profit South Dakota Corp., et al. v. Rogers C. B. Morton, Civil No. 687-73. Dismissed, January 7, 1974.

Eugene C. Paine, et al., A-27632 (August 21, 1958)

Eugene C. Paine, et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, September 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd. & remanded, February 23, 1961; judgment for defendant, March 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (September 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, December 16, 1970; rev'd., 496 F. 2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, February 16, 1966; no appeal.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F. 2d 722 (1970).

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez, et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, September 1, 1970.

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, December 1, 1975; no appeal.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, November 13, 1961; no appeal.

Petroleum Owgership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F. 2d 793 (1968).

City of Phoenix v. Alvin B. Reeves, et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, August 9, 1974; reconsideration denied, September 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, August 2, 1962; aff'd., 317 F. 2d 573 (1963); no petition.

Platte Valley Construction Co., IBCA-168 (August 28, 1958)

George Stanek, et al. v. U.S., Ct. Cl. 189-62. Compromised.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, August 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, December 7, 1964.

L. O. Power, et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (August 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975)

Barbara C. Lisco v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D. N.M. Suit pending.

Nola Grace Ptasynski v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D. N.M. Suit pending.

R. E. Puckett, A-30419 (October 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, August 15, 1966.

Ethel C. Radzewicz, et al., A-30866 (January 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, October 30, 1969; dismissed, November 17, 1970.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, August 11, 1975; no appeal.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, December 13, 1968; subsequent Contract Officer's dec., December 3, 1969; interim dec., December 2, 1969; Order to Stay Proceedings until March 31, 1970; dismissed with prejudice, August 3, 1970.

Estate of Elgin Red Elk, IA-1230 (November 13, 1964)

Bert Taunah, et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, April 27, 1967; rev'd. & remanded, 398 F. 2d 795 (10th Cir. 1968); no petition.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326; 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton, et al., Civil No. 1105, D. Mont. Dismissed, June 14, 1973; no appeal.

Reliable Coal Corp., 1 IBMA 97; 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-1417, United States Court of Appeals, 4th Cir. Suit pending.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, April 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, March 6, 1958; no appeal.

Mark B. Ringstad, et al., Inlet Oil Corp., et al., Robert L. Lawler, et al., A-31111, A-31115, A-31134, A-31118 (March 17, 1970)

Robert Lawler, et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alas.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alas. Stipulated dismissal without prejudice, August 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, February 22, 1972; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965), Reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBLA 106, 78 I.D. 234 (1971), IBLA 71-5 (Supp. 1) (August 16, 1974), 80 I.D. 390 (1973)

Oneta Lamb Robedeaux, et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, January 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, October 29, 1973; amended judgment for plaintiff, November 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, April 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, October 2, 1975; judgment for plaintiff, December 1, 1975.

Evelyn R. Robertson, et al., Duncan Miller, A-29251 (March 21 1963), (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, March 13, 1964; aff'd., 349 F. 2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alas. Dismissed with prejudice, September 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, April 4, 1964; aff'd., 349 F. 2d 195 (1965); no petition.

Richard W. Rowe, Daniel Gaudiane, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in his official capacity as Secretary of the Interior, Civil No. 75-1152. Suit pending.

Edgar Rundle, A-29593 (August 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, September 22, 1965; aff'd., 379 F. 2d 112 (1967); cert. denied, 389 U.S. 845 (1967).

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Rit Rim Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Louise Safarik, et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment fo. defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Mgmt., Civil No. A-173-73 CIV, D. Alas. Dismissed, March 4, 1975; reinstated by court order, April 9, 1975.

Louis Samuel, et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D. N.M. Dismissed with prejudice, January 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Mgmt., & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, October 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton, et al., Civil No. 03266, E.D. Mich. Dismissed, February 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, August 26, 1974; no appeal.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd., sub nom. S. Jack Hinton, et al. v. Stewart L. Udall, 364 F. 2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, November 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D. N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed January 12, 1966; order vacating prior judgment issued January 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (April 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen, et al., Civil No. 7135, D. N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, individually & as Secretary of the Interior, Daniel P. Baker, individually & as Dir. for the State of Wyo., Bureau of Land Mgmt., & Glenna M. Lane, individually & as Chief, O&G Section, Land Ofc., Wyo., Civil No. 5949, D. Wyo. Dismissed, November 15, 1974 (opinion); no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D.

Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., Supra., filed June 3, 1974.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (January 8, 1964). Reconsideration denied, March 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (November 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, October 31, 1968; aff'd., 419 F. 2d 663 (1969); petition for rehearing en banc denied, October 8, 1969; no petition.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,692. Petition for review dismissed, December 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, January 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, March 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, January 31, 1964; no appeal.

Administrative Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyols Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 81 I.D. 651 (1974)

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Suit pending.

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Suit pending.

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Suit pending.

John J. Sexton, 15 IBLA 69 (1974), 20 IBLA 187 (on reconsideration)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alas. Suit pending.

William D. Sexton, et al., 9 IBLA 316 (1973)
See William D. Sexton, et al.

William D. Sexton, et al., 9 IBLA 316 (1973), R. C. Bailey, et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973), Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973), Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton, et al., Civil No. F-9-73, D. Alas.

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alas.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alas.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alas.

Actions consolidated by order dated July 23, 1974. Judgment for defendant, August 5, 1974; aff'd., December 19, 1975.

John W. Shaw, A-29143 (April 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Aff'd., 264 F. Supp. 390 (1967); appeal docketed March 13, 1967; appeal dismissed.

Shell Oil Co., A-30575 (October 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal August 19, 1968.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd., 432 F. 2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior - Mining Enforcement & Safety Administration (MESA), United States Court of Appeals for the 4th Cir. Suit pending.

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D. N.M. Judgment for plaintiff, August 7, 1975 (opinion); no appeal.

Eldon L. Smith, A-30944 (October 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, February 3, 1970.

L. B. Smith, et al., A-30447 (October 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Stanley C. Soho, A-28135 (August 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated February 1, 1963, by Director, Bureau of Land Management, approved by the Secretary March 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, September 3, 1963; aff'd., 336 F. 2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho, et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, January 17, 1961; no appeal.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, December 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis C. Wedekind, 77 I.D. 177 (1970), 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton, et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 117; Dist. Ct. reserves jurisdiction; supplemental complaint filed, August 1, 1975.

Southport Land & Commercial Co., Sacramento 075330 (January 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall, et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd., 371 F. 2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, January 14, 1970; appeal dismissed, April 6, 1970.

Southwestern Petroleum Corp., et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 3773, D. N.M. Judgment for defendant, March 8, 1965; aff'd., 361 F. 2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California, et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel, et al., Civil No. A-159-69, D. Alas. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd., sub nom. Standard Oil Co. of Cal. v. Rogers C. B. Morton, et al., 450 F. 2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D. N.M. Judgment for plaintiff, January 21, 1965; no appeal.

Starling Brokers, et al., 6 IBLA 237 (1972)

Hillin L. Arnold, et al. v. Rogers C. B. Morton, et al., Civil No. A-157-72 Civ., D. Alas. Judgment for defendant, March 20, 1974; rev'd. and remanded, January 23, 1976.

Ross Stegman, A-30812 (November 21, 1967), U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, December 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & real party in interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, September 10, 1975; appeal filed, November 6, 1975.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. Walter J. Hickel, et al., Civil No. 8074, D. N.M. Judgment for defendant, January 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd., 444 F. 2d 200 (10th Cir. 1971); no petition.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. U.S. & Dept. of the Interior, et al., Civil No. LV-2112, D. Nev. Judgment for defendant, August 29, 1975; amended order judgment for defendant, September 4, 1975.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. The Department of the Interior, Bureau of Land Management, Civil No. A74-103, D. Alas. Suit pending.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (November 10, 1966)

Amanda Price v. Udall, Civil No. 33-67, D. Alas. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F. 2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman, et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, November 1, 1962 (opinion); rev'd., 324 F. 2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist Ct. aff'd., 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd. in part & remanded, 437 F. 2d 636 (1970); aff'd. in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97 (1957), Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Albert Thomas, et ux. (Contestees) v. Sam A. DeVilbiss, et ux. (Contestees), 10 IBLA 56 (1973)

Albert & Ellora Thomas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, January 12, 1976; notice of appeal filed, February 5, 1976.

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, September 18, 1958; aff'd., 270 F. 2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D. N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, et al., Civil No. 2406-61. Judgment for defendant, March 22, 1962; aff'd., 314 F. 2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd, et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd., 350 F. 2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood, et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; aff'd., 350 F. 2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties Inc., d/b/a Toke Cleaners & Launderers v. U.S.,

Department of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D. N.D. Stipulation for dismissal & order dismissing case, June 16, 1975.

Tree Land Nursery, Inc., IBCA-436 (October 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

Tyee Construction Co., IBCA-112 & 113 (April 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co., et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd., 409 F. 2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, Ramon F. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd., 289 F. 2d 790 (1961); no petition.

Union Oil Co. of California, et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penelope Chase Brown, et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc filed.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Harlan H. Hugg, et al. v. Stewart L. Udall, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Barnette T. Napier, et al. v Secretary of the Interior, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc filed.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

The Oil Shale Corp., et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc filed.

The Oil Shale Corp., et al. v. Stewart L. Udall, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc filed.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, December 27, 1965; no appeal.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming & Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd., 379 F. 2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

U.S. v. Alonzo A. Adams, et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams, et al. v. Paul B. Witmer, et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed,

November 27, 1957 (opinion); rev'd. & remanded, 271 F. 2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (9th Cir. 1959).

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, January 29, 1962 (opinion); judgment modified, 318 F. 2d 861 (9th Cir. 1963); no petition.

U.S. v. Ken & Fonneth D. Alexander, 17 IBLA 421 (1974)

Ken & Kenneth D. Alexander v. The Secretary of the Interior, Civil No. 75-465, D. Ore. Suit pending.

U.S. v. A. F. Anderson, et al., 15 IBLA 123 (1974)

A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-151, D. Wyo. Judgment for defendant, November 7, 1975.

Consolidated with Walter H. Burkhardt, et al. v. Rogers C. B. Morton, et al., Civil No. C74-152, D. Wyo., for purposes of appeal by order of November 19, 1975; dismissed, November 28, 1975.

U.S. v. Arizona Exploration Co., et al., A-28876 (June 22, 1962)

Blaine J. Lord, et al. v. Roy T. Helmandollar, et al., Civil No. 987-63. Judgment for defendants, September 30, 1963; appeal dismissed, 348 F. 2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual & as Executrix of the Last Will of E. A. Barrows, deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, April 20, 1970; aff'd., 447 F. 2d 80 (9th Cir. 1971).

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Dismissed with prejudice, June 6, 1975; notice of appeal, July 3, 1975.

U.S. v. Blue Bell Gold Mining Co., et al., 17 IBLA 182 (1974)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, September 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D. N.M. Suit pending.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alas. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, August 19, 1964 (opinion); no appeal.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), Reconsideration denied, January 22, 1970.

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; appeal docketed September 27, 1972.

U.S. v. R. W. Brubaker, et al., A-30636 (July 24, 1968), 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, August 13, 1973; aff'd., June 27, 1974; no petition.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (August 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, September 24, 1970; no appeal.

U.S. v. John C. Chapman, et al., A-30581 (July 16, 1968)

John C. Chapman, et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, January 18, 1972; no appeal.

U.S. v. Charleston Stone Products, Inc., 9 IBLA 94 (1973)

Charleston Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, November 7, 1974 (opinion); appeal docketed.

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, January 9, 1962; no appeal.

Nick Chournos, et al. v. U.S., et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd., 335 F. 2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, April 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd., October 9, 1974; rehearing denied, January 13, 1975; cert. denied, April 21, 1975.

U.S. v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, January 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, December 6, 1971; appeal withdrawn, March 10, 1972.

U.S. v. Alfred Coleman, A-28557 (March 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, February 25, 1965 (opinion); remanded, 363 F. 2d 190 (9th Cir. 1966); aff'd., 379 F. 2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd. and remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd., 405 F. 2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd., 399 F. 2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (January 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. Alvis F. Denison, et al., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Denison, deceased v. Stewart L. Udall, Civil No. 963 D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, January 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, January 31, 1972; aff'd., February 1, 1974; cert. denied, October 15, 1974.

U.S. v. J. S. Devenny, A-30289 (August 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (April 28, 1965), 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, September 10, 1969; decision of BLM dated January 16, 1970 aff'd. by the Board of Land Appeals, May 10, 1971.

U.S. v. Francis Dlouhy, et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, November 28, 1960.

U.S. v. The Dredge Corp., A-28022 (December 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; judgment for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers B. Morton, et al., Civil No. LV-

2029, D. Nev. Stipulated dismissal, February 12, 1974.

U.S. v. Maurice Duval, et al., 1 IBLA 103 (1970)

Maurice Duval, et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Dismissed, 347 F. Supp. (1972); aff'd., December 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, January 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (January 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, November 23, 1970.

U.S. v. Everett Foster, et al., 65 I.D. 1 (1958)

Everett Foster, et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, December 5, 1958 (opinion); aff'd., 271 F. 2d 836 (1959); no petition.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, August 8, 1975.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd., 405 F. 2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (September 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, October 8, 1969; no appeal.

U.S. v. Golden Grigg, et al., 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson, Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-73, D. Idaho. Suit pending.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, September 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck, et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as Individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Suit pending.

U.S. v. Urban Harenberg, et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

U.S. v. Richard P. Haskins, A-30737 (December 19, 1966), 3 IBLA 77 (1971)

Richard P. Haskins for Himself & as Admin. of the Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, April 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, October 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd. & remanded for further proceedings, October 25, 1974; no petition.

U.S. v. Gerald D. Heden, et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-343, D. Ore. Suit pending.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tyek, et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd. & remanded for further proceedings, 419 F. 2d 766 (9th Cir. 1969);

cert. denied, 398 U.S. 950 (1970); judgment for defendant, October 6, 1970.

U.S. v. Charles H. Henrikson, et al., 70 I.D. 212 (1963)

Charles H. Henrikson, et al. v. Stewart L. Udall, et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd., 350 F. 2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks, et al., A-30780 (October 24, 1967)

Taylor T. Hicks, et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, March 26, 1970.

U.S. v. Ernest Higbee, et al., A-31063 (April 1, 1970)

Ernest Higbee, et al. v. Rogers C. B. Morton, et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, September 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, December 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; appeal docketed, September 23, 1974.

U.S. v. Ideal Cement Co., 5 IBLA 235 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alas. Judgment for defendant, February 25, 1974; motion to vacate judgment denied, May 6, 1974; appeal docketed, July 13, 1974.

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974) See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (October 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, November 21, 1967; no appeal.

U.S. v. Robert N. Johnson, et al., A-30828 (January 29, 1968)

Robert N. Johnson, et al. & Thelma A. Johnson as indivi. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (December 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, October 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; appeal docketed, November 19, 1975.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, November 13, 1970.

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton, et al., Civil No. 2155, D. Mont. Dismissed with prejudice, January 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall, et al., Civil No. 1864, D. Nev. Judgment for defendant, January 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (March 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Judgment for defendant, February 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, September 24, 1974; no appeal.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Assoc., Intervenor, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles, et al., Civil No. 74-68(RDF), D. Nev. Suit pending.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, October 1, 1975.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall, et al., Civil No. 2116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd. & remanded, 408 F. 2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, August 13, 1969.

U.S. v. Charles Maher, et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, April 3, 1973.

U.S. v. Mary A. Mattey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira, et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, November 16, 1966; rev'd. & remanded, 403 F. 2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall, et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, December 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969)

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; rev'd. & remanded for further proceedings, January 14, 1976 (opinion).

U.S. v. Frank & Wanita Melluzzo, et al., 76 I.D. 181 (1969), Reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co., et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, December 8, 1971; dismissed, February 4, 1974.

U.S. v. Mineral Ventures, Ltd., 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Ore. Judgment for defendant, July 10, 1975; notice of appeal filed September 5, 1975.

U.S. v. G. Patrick Morris, et al., 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Suit pending.

U.S. v. Ernest Evon Moseley, A-30971 (December 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, February 19, 1963 (opinion); aff'd., 326 F. 2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, March 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Suit pending.

U.S. v. Leonard F. Nelson, IBLA 71-57 (December 6, 1972)

Leonard F. Nelson v. Rogers C. B. Morton, et al., Civil No. A-3-73, D. Alas. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd. & remanded, January 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, November 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, January 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995, D. N.M. Dismissed, October 5, 1973; rev'd. & remanded, June 18, 1974; rehearing denied, September 30, 1974; remanded to the Dept. for further proceedings, January 30, 1975; no appeal.

U.S. v. Lloyd O'Callaghan, Sr., et al., 79 I.D. 689 (1972), U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975)

Lloyd O'Callaghan, Sr., Individually & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton, et al., Civil No. 73-129-S, S.D. Cal. Aff'd. in part & remanded, May 14, 1974.

U.S. v. Wilma L. Oldaker, A-30378 (August 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alas. Stipulated dismissal with prejudice, March 3, 1967; no appeal.

U.S. v. J. R. Osborne, et al., 77 I.D. 83 (1970)

J. R. Osborne, individually & on behalf of R. R. Borders, et al. v. Rogers C. B. Morton, et al., Civil No. 1564, D. Nev. Judgment for defendant, March 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, February 22, 1974; remanded to the Dept. with orders to re-examine the issues, December 3, 1974.

U.S. v. Paul C. Poncia, et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Suit pending.

U.S. v. Richard C. Porter, et al., A-29882 (April 24, 1964)

Hal W. Eldridge, et al. v. Secretary of the Interior, Civil No. 64-353, D. Ore. Judgment for defendant, December 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin, et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin, et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, January 15, 1960; rev'd. & remanded, 284 F. 2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin & Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, March 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F. 2d 615 (1965); judgment for defendant, January 4, 1966; per curiam dec., remanded for transfer to Dist. Ct. for Oregon. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Ore. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd., 410 F. 2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam, et al., 1 IBLA 143 (1970)

William D. Pulliam, et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Dismissed on the merits, March 29, 1973; no appeal.

U.S. v. Marvin C. Ramsey, et al., 14 IBLA 152 (1974)

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U.S. v. Ramsher Mining & Engineering Co., 13 IBLA 268 (1973)

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U.S. v. Cecil R. Reed, A-30354 (September 29, 1965)

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U.S. v. Thomas R. Shuck, A-27965 (February 2, 1960)

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U.S. v. Charles E. Stewart, A-28966 (September 25, 1962)

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U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

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U.S. v. Elmer H. Swanson, 81 I.D. 14 (1974)

Elmer H. Swanson v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 4-74-10, D. Idaho. Dismissed without prejudice, December 23, 1975 (opinion).

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

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U.S. v. Vernon O. & Ina C. White, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, January 6, 1967; aff'd., 404 F. 2d 334 (9th Cir. 1968); no petition.

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Shell Oil Co. & D. A. Shale, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-F-739, D. Colo. Suit pending.

U.S. v. Rodney Wood, et al., A-30697 (May 31, 1967)

Rodney Wood, et al. v. Stewart L. Udall, Secretary of the Interior & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, November 7, 1967; amended complaint filed; judgment for defendant, March 27, 1969; no appeal.

U.S. v. Merle I. Zweifel, et al., 16 IBLA 74 (1974)

Walter H. Burkhardt, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-152, D. Wyo. Judgment for defendant, November 7, 1975.

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U.S. v. Merle I. Zweifel, et al., 80 I.D. 323 (1973)

Merle I. Zweifel, et al. v. U.S., Civil No. C-5276, D. Colo. Dismissed without prejudice, October 31, 1973.

Kenneth Roberts, et al. v. Rogers C. B. Morton & The Interior Board of Land Appeals, Civil No. C-5308 D. Colo. Dismissed with prejudice, January 23, 1975 (opinion); appeal docketed, March 17, 1975.

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough, et al., Civil No. C-158-63, D. Utah. Dismissed, July 13, 1964 (opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (September 21, 1966)

Paul E. Unruh v. Udall, et al., Civil No. 1894-H, D. Nev. Judgment for defendant, June 14, 1967; no appeal.

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. Rogers C. B. Morton, et al., Civil No. C-5-72, D. Utah. Dismissed with prejudice, November 3, 1972; aff'd., September 20, 1974.

Henrietta Roberts Vaden, IBLA 74-1, dismissed by order, August 8, 1973, Petition for Reconsideration denied by order, May 29, 1975.

Henrietta Roberts Vaden, a/k/a Henrietta R. Vaden v. Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. A75-223 CIV, D. Alas. Suit pending.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No. 1744-56. Dismissed by stipulation, April 18, 1957; no appeal.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin), 1 IBLA 312, 79 I.D. 615 (1972)

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Burt A. Wackerli, et al., 73 I.D. 280 (1966)

Burt & Lueva C. Wackerli, et al. v. Stewart L. Udall, et al., Civil No. 1-66-92, D. Idaho. Amended complaint filed March 17, 1971; judgment for plaintiff, February 28, 1975.

Estate of Amelia Keyes Abbott Viramontes Walker, IA-1339 (April 5, 1966)

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Jack A. Walker, A-30492 (April 28, 1966)

Jack A. Walker v. U.S. & Udall, Civil No. 1-66-80, D. Idaho. Judgment for plaintiff, July 3, 1967; rev'd., 409 F. 2d 477 (9th Cir. 1969); no petition.

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Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. U.S., Civil No. 278-59-PH, S.D. Cal. Judgment for plaintiff, October 26, 1959; satisfaction of judgment entered February 9, 1960.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83; 78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. Rogers C. B. Morton, et al., Civil No. 974, D. Mont. Dismissed, July 6, 1973 (opinion); no appeal.

Lucille S. West, Duncan Miller, et al., A-29242 et al. (February 25, 1963), Duncan Miller, A-29231 (February 5, 1963)

Cecil H. Phillips, et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, February 25, 1964; no appeal.

Estate of John P. Whitetail, IA-T-23 (April 17, 1970)

Doris Ann Whitetail Parker, et al. v. John Pappan, et al., Civil No. 70-C-373, D. Okla. Dismissed, July 10, 1973; motion for new trial & reconsideration overruled, August 17, 1973; no appeal.

Estate of Wienstenie (Maggie) Wide Abbott, 80 I.D. 617 (1973), 4 IBIA 79 (1975)

Doris Whiz Burkybile v. Alvin Smith, Sr., as Guardian Ad Litem for Celma, Vernon, Kenneth, Nona & Joseph Smith, Minors, et al., Civil No. C-75-190, E.D. Wash. Suit pending.

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D. N.M. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

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Actions consolidated. Judgment for defendant, plaintiff & defendant, respectively, August 3, 1961; aff'd., 313 F. 2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

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David L. Williams, A-29858 (February 12, 1963)

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William A. Smith Contracting Co., IBCA-83 (July 16, 1959)

William A. Smith Contracting Co., et al. v. U.S., Ct. Cl. No. 264-57. Judgment for plaintiff, 292 F. 2d 847 (1961); no appeal.

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Estate of Louise Wilson, IA-1380 (March 1, 1966)

Charles W. Heffelman v. Stewart L. Udall, Civil No. 6402, N.D. Okla. Dismissed, June 16, 1966; aff'd., 378 F. 2d 109 (10th Cir. 1967); cert. denied, 389 U.S. 926 (1967).

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Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

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Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil No. 2595-60. Judgment for defendant, June 5, 1962; remanded, 312 F. 2d 358 (1962).

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Young Associates, Inc., IBCA-557-4-66 (December 4, 1968)

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121-123----------21 IBLA 365 (June 12, 1975)
161----------19 IBLA 326 (Apr. 7, 1975)
21 IBLA 166 (July 22, 1975)
162----------23 IBLA 41 (Dec. 2, 1975)
181----------19 IBLA 245 (Mar. 28, 1975)
181-263----------19 IBLA 320 (Apr. 7, 1975)
181 et seq.----------19 IBLA 235 (Mar. 26, 1975)
19 IBLA 245 (Mar. 28, 1975)
19 IBLA 261 (Mar. 31, 1975)
20 IBLA 1 (Apr. 14, 1975)
20 IBLA 59; 82 I.D. 174 (1975)
20 IBLA 134 (May 5, 1975)
20 IBLA 333 (June 11, 1975)
21 IBLA 254 (Aug. 11, 1975)
22 IBLA 52 (Sept. 17, 1975)
22 IBLA 172 (Sept. 30, 1975)
23 IBLA 313 (Nov. 10, 1975)
23 IBLA 41 (Dec. 2, 1975)
23 IBLA 142 (Dec. 23, 1975)
182----------19 IBLA 245 (Mar. 28, 1975)
184(h)----------19 IBLA 235 (Mar. 26, 1975)
22 IBLA 261 (Oct. 24, 1975)
22 IBLA 336 (Nov. 11, 1975)
184(h)(2)----------21 IBLA 160 (July 21, 1975)
21 IBLA 163 (July 21, 1975)
184(i)----------21 IBLA 160 (July 21, 1975)
21 IBLA 163 (July 21, 1975)
187----------21 IBLA 66 (June 25, 1975)
187a----------22 IBLA 52 (Sept. 17, 1975)
188----------21 IBLA 312; 82 I.D. 386 (1975)
21 IBLA 130 (Sept. 26, 1975)
188(b)----------18 IBLA 323 (Jan. 6, 1975)
18 IBLA 404 (Feb. 10, 1975)
18 IBLA 420 (Feb. 12, 1975)
19 IBLA 261 (Mar. 31, 1975)
19 IBLA 280 (Apr. 7, 1975)
19 IBLA 307 (Apr. 7, 1975)
20 IBLA 146 (May 5, 1975)
20 IBLA 206 (May 8, 1975)
20 IBLA 280 (May 22, 1975)
20 IBLA 322 (June 6, 1975)
20 IBLA 361 (June 12, 1975)
21 IBLA 69 (June 25, 1975)
21 IBLA 144 (July 15, 1975)
21 IBLA 287 (Aug. 11, 1975)
21 IBLA 312; 82 I.D. 386 (1975)
21 IBLA 336 (Aug. 18, 1975)
22 IBLA 1 (Sept. 4, 1975)
22 IBLA 6 (Sept. 4, 1975)
22 IBLA 47 (Sept. 16, 1975)

TITLE 30 (Continued):

sec. 188(b)-Con.----------22 IBLA 95 (Sept. 22, 1975)
22 IBLA 130 (Sept. 26, 1975)
22 IBLA 175 (Sept. 30, 1975)
22 IBLA 270 (Oct. 30, 1975)
22 IBLA 277 (Oct. 30, 1975)
22 IBLA 309 (Nov. 10, 1975)
23 IBLA 148 (Dec. 23, 1975)
188(c)----------18 IBLA 323 (Jan. 6, 1975)
18 IBLA 390 (Feb. 6, 1975)
18 IBLA 404 (Feb. 10, 1975)
18 IBLA 420 (Feb. 12, 1975)
19 IBLA 53 (Feb. 21, 1975)
19 IBLA 188 (Mar. 18, 1975)
19 IBLA 261 (Mar. 31, 1975)
19 IBLA 280 (Apr. 7, 1975)
19 IBLA 305 (Apr. 7, 1975)
19 IBLA 307 (Apr. 7, 1975)
20 IBLA 146 (May 5, 1975)
20 IBLA 206 (May 8, 1975)
20 IBLA 280 (May 22, 1975)
20 IBLA 322 (June 6, 1975)
20 IBLA 361 (June 12, 1975)
20 IBLA 383 (June 12, 1975)
21 IBLA 69 (June 25, 1975)
21 IBLA 287 (Aug. 11, 1975)
21 IBLA 312; 82 I.D. 386 (1975)
21 IBLA 336 (Aug. 18, 1975)
22 IBLA 1 (Sept. 4, 1975)
22 IBLA 47 (Sept. 16, 1975)
22 IBLA 95 (Sept. 22, 1975)
22 IBLA 130 (Sept. 26, 1975)
22 IBLA 175 (Sept. 30, 1975)
22 IBLA 309 (Nov. 10, 1975)
23 IBLA 148 (Dec. 23, 1975)
189----------20 IBLA 248 (May 16, 1975)
22 IBLA 52 (Sept. 17, 1975)
192----------20 IBLA 248 (May 16, 1975)
201(a)----------18 IBLA 342 (Jan. 13, 1975)
20 IBLA 125 (Apr. 28, 1975)
201(b)----------18 IBLA 320 (Jan. 6, 1975)
22 IBLA 60 (Sept. 18, 1975)
203----------22 IBLA 139 (Sept. 26, 1975)
23 IBLA 1 (Nov. 25, 1975)
204----------23 IBLA 1 (Nov. 25, 1975)
209----------19 IBLA 1 (Feb. 20, 1975)
211----------23 IBLA 102 (Dec. 23, 1975)
211(b)----------21 IBLA 178 (July 25, 1975)
223----------20 IBLA 59; 82 I.D. 174 (1975)
20 IBLA 344 (June 11, 1975)
226----------18 IBLA 326 (Jan. 7, 1975)
18 IBLA 393; 82 I.D. 60 (1975)
19 IBLA 191 (Mar. 18, 1975)
21 IBLA 133 (July 14, 1975)
21 IBLA 304 (Aug. 14, 1975)
226(a)----------20 IBLA 333 (June 11, 1975)
21 IBLA 76 (June 25, 1975)
226(b)----------19 IBLA 125 (Mar. 5, 1975)
21 IBLA 56 (June 18, 1975)
22 IBLA 313 (Nov. 10, 1975)
22 IBLA 379 (Nov. 17, 1975)
226(c)----------19 IBLA 125 (Mar. 5, 1975)
19 IBLA 320 (Apr. 7, 1975)
21 IBLA 56 (June 18, 1975)
22 IBLA 136 (Sept. 26, 1975)
22 IBLA 220 (Oct. 15, 1975)
22 IBLA 307 (Nov. 10, 1975)
22 IBLA 379 (Nov. 17, 1975)
226(e)----------20 IBLA 134 (May 5, 1975)
20 IBLA 315 (June 4, 1975)
21 IBLA 147 (July 16, 1975)
226(f)----------20 IBLA 134 (May 5, 1975)
226(j)----------19 IBLA 1 (Feb. 20, 1975)
20 IBLA 344 (June 11, 1975)
226-1(d)----------20 IBLA 134 (May 5, 1975)
226-2----------22 IBLA 130 (Sept. 26, 1975)
229----------20 IBLA 59; 82 I.D. 174 (1975)
262----------20 IBLA 59; 82 I.D. 174 (1975)
272----------20 IBLA 59; 82 I.D. 174 (1975)
282----------20 IBLA 59; 82 I.D. 174 (1975)

TITLE 30 (Continued):

sec.351 et seq.---------20 IBLA 292 (May 27, 1975)
22 IBLA 33 (Sept. 10, 1975)
22 IBLA 313 (Nov. 10, 1975)
351-359----------18 IBLA 326 (Jan. 7, 1975)
21 IBLA 185 (July 25, 1975)
21 IBLA 239 (Aug. 11, 1975)
22 IBLA 242 (Oct. 22, 1975)
22 IBLA 289 (Oct. 30, 1975)
23 IBLA 102 (Dec. 23, 1975)
352----------18 IBLA 326 (Jan. 7, 1975)
19 IBLA 261 (Mar. 31, 1975)
21 IBLA 239 (Aug. 11, 1975)
22 IBLA 242 (Oct. 22, 1975)
22 IBLA 289 (Oct. 30, 1975)
22 IBLA 313 (Nov. 10, 1975)
355----------18 IBLA 326 (Jan. 7, 1975)
359----------20 IBLA 272 (May 19, 1975)
22 IBLA 52 (Sept. 17, 1975)
482(a)----------5 IBMA 185; 82 I.D. 506 (1975)
501----------23 IBLA 41 (Dec. 2, 1975)
502----------23 IBLA 41 (Dec. 2, 1975)
521 et seq.---------23 IBLA 41 (Dec. 2, 1975)
524----------23 IBLA 41 (Dec. 2, 1975)
601----------19 IBLA 9; 82 I.D. 68 (1975)
19 IBLA 326 (Apr. 7, 1975)
22 IBLA 62 (Sept. 18, 1975)
601 et seq.---------20 IBLA 47 (Apr. 21, 1975)
601-615----------21 IBLA 204 (July 30, 1975)
611----------19 IBLA 9; 82 I.D. 68 (1975)
19 IBLA 326 (Apr. 7, 1975)
21 IBLA 166 (July 22, 1975)
21 IBLA 363; 82 I.D. 414 (1975)
22 IBLA 62 (Sept. 18, 1975)
611 et seq.---------19 IBLA 9; 82 I.D. 68 (1975)
21 IBLA 296 (Aug. 11, 1975)
612----------21 IBLA 204 (July 30, 1975)
612a----------20 IBLA 156 (May 5, 1975)
621----------19 IBLA 255 (Mar. 31, 1975)
621 et seq.---------19 IBLA 255 (Mar. 31, 1975)
621(b)----------20 IBLA 100 (Apr. 25, 1975)
623----------20 IBLA 100 (Apr. 25, 1975)
623-624----------19 IBLA 255 (Mar. 31, 1975)
625----------20 IBLA 156 (May 5, 1975)
641-646----------20 IBLA 352 (June 11, 1975)
643----------20 IBLA 352 (June 11, 1975)
701----------21 IBLA 24 (June 16, 1975)
23 IBLA 23 (Dec. 1, 1975)
701 et seq.---------18 IBLA 385 (Jan. 31, 1975)
21 IBLA 24 (June 16, 1975)
21 IBLA 217 (July 31, 1975)
23 IBLA 23 (Dec. 1, 1975)
701-709----------20 IBLA 156 (May 5, 1975)
702----------21 IBLA 24 (June 16, 1975)
21 IBLA 217 (July 31, 1975)
23 IBLA 23 (Dec. 1, 1975)
703----------21 IBLA 24 (June 16, 1975)
721-740----------4 IBMA 127 (Apr. 29, 1975)
801(a)(2)----------5 IBMA 217; 82 I.D. 535 (1975)
801 et seq.---------4 IBMA 30; 82 I.D. 36 (1975)
4 IBMA 273; 82 I.D. 295 (1975)
801-960----------4 IBMA 30; 82 I.D. 36 (1975)
4 IBMA 52; 82 I.D. 89 (1975)
4 IBMA 61; 82 I.D. 96 (1975)
4 IBMA 130; 82 I.D. 195 (1975)
4 IBMA 166; 82 I.D. 234 (1975)
4 IBMA 175; 82 I.D. 246 (1975)
4 IBMA 198; 82 I.D. 264 (1975)
4 IBMA 224; 82 I.D. 277 (1975)
4 IBMA 252 (June 16, 1975)
4 IBMA 255 (June 18, 1975)
4 IBMA 273; 82 I.D. 295 (1975)
4 IBMA 298; 82 I.D. 311 (1975)
5 IBMA 1 (July 15, 1975)
5 IBMA 52 I.D. 349 (1975)
5 IBMA 12; 82 I.D. 353 (1975)
5 IBMA 34 (July 30, 1975)
5 IBMA 36; 82 I.D. 362 (1975)
5 IBMA 65; 82 I.D. 375 (1975)
5 IBMA 132; 82 I.D. 441 (1975)
5 IBMA 144; 82 I.D. 445 (1975)
5 IBMA 165 (Sept. 26, 1975)
5 IBMA 229 (Nov. 14, 1975)

TITLE 30 (Continued):

sec. 801-960-Con.------5 IBMA 276; 82 I.D. 598 (1975)
5 IBMA 304 (Dec. 15, 1975)
5 IBMA 338; 82 I.D. 622 (1975)
5 IBMA 346; 82 I.D. 632 (1975)
5 IBMA 356; 82 I.D. 636 (1975)
802----------4 IBMA 139; 82 I.D. 221 (1975)
802(b)----------5 IBMA 217; 82 I.D. 535 (1975)
802(d)----------5 IBMA 217; 82 I.D. 535 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
5 IBMA 329; 82 I.D. 618 (1975)
802(g)----------5 IBMA 217; 82 I.D. 535 (1975)
802(h)----------5 IBMA 306; 82 I.D. 607 (1975)
802(j)----------4 IBMA 198; 82 I.D. 264 (1975)
803----------5 IBMA 217; 82 I.D. 535 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
811----------5 IBMA 231; 82 I.D. 553 (1975)
811(a)----------5 IBMA 231; 82 I.D. 553 (1975)
811(j)----------5 IBMA 185; 82 I.D. 506 (1975)
813(d)----------21 IBLA 363; 82 I.D. 414 (1975)
5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 113 (Sept. 4, 1975)
813(e)----------5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 113 (Sept. 4, 1975)
813(f)----------5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 113 (Sept. 4, 1975)
814----------5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 356; 82 I.D. 636 (1975)
814(a)----------4 IBMA 1; 82 I.D. 22 (1975)
4 IBMA 52; 82 I.D. 89 (1975)
4 IBMA 88; 82 I.D. 111 (1975)
4 IBMA 104; 82 I.D. 160 (1975)
4 IBMA 259; 82 I.D. 378 (1975)
5 IBMA 51; 82 I.D. 368 (1975)
5 IBMA 259; 82 I.D. 578 (1975)
814(b)----------4 IBMA 30; 82 I.D. 36 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
814(c)----------5 IBMA 211; 82 I.D. 525 (1975)
5 IBMA 217; 82 I.D. 535 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
814(c)(1)----------4 IBMA 139; 82 I.D. 221 (1975)
4 IBMA 184; 82 I.D. 250 (1975)
5 IBMA 19; 82 I.D. 355 (1975)
5 IBMA 100; 82 I.D. 409 (1975)
5 IBMA 231; 82 I.D. 553 (1975)
814(c)(2)----------4 IBMA 184; 82 I.D. 250 (1975)
814(d)----------4 IBMA 198; 82 I.D. 264 (1975)
814(e)----------4 IBMA 184; 82 I.D. 250 (1975)
5 IBMA 259; 82 I.D. 578 (1975)
814(g)----------4 IBMA 1; 82 I.D. 22 (1975)
815----------4 IBMA 104; 82 I.D. 160 (1975)
4 IBMA 139; 82 I.D. 221 (1975)
4 IBMA 198; 82 I.D. 264 (1975)
5 IBMA 19; 82 I.D. 355 (1975)
5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 100; 82 I.D. 409 (1975)
5 IBMA 113 (Sept. 4, 1975)
5 IBMA 306; 82 I.D. 607 (1975)
815(a)----------4 IBMA 139; 82 I.D. 221 (1975)
4 IBMA 184; 82 I.D. 250 (1975)
5 IBMA 19; 82 I.D. 355 (1975)
5 IBMA 51; 82 I.D. 368 (1975)
5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 98 (Aug. 19, 1975)
5 IBMA 100; 82 I.D. 409 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
815(a)(1)----------4 IBMA 1; 82 I.D. 22 (1975)
4 IBMA 30; 82 I.D. 36 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
815(b)----------4 IBMA 1; 82 I.D. 22 (1975)
815(c)----------4 IBMA 1; 82 I.D. 22 (1975)
815(d)----------5 IBMA 306; 82 I.D. 607 (1975)
816----------5 IBMA 36; 82 I.D. 362 (1975)
5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 113 (Sept. 4, 1975)
5 IBMA 306; 82 I.D. 607 (1975)
816(a)----------5 IBMA 74; 82 I.D. 392 (1975)
816(b)----------5 IBMA 74; 82 I.D. 392 (1975)
817----------4 IBMA 241; 82 I.D. 284 (1975)
817(d)----------5 IBMA 306; 82 I.D. 607 (1975)
818----------4 IBMA 1; 82 I.D. 22 (1975)
819----------4 IBMA 184; 82 I.D. 250 (1975)
4 IBMA 241; 82 I.D. 284 (1975)

TITLE 30 (Continued):

sec. 819-Con.----------5 IBMA 3 (July 25, 1975)
5 IBMA 3 (Aug. 15, 1975)
5 IBMA 72 (Aug. 11, 1975)
5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 185; 82 I.D. 506 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
819(a)----------4 IBMA 112; 82 I.D. 163 (1975)
5 IBMA 259; 82 I.D. 578 (1975)
5 IBMA 268; 82 I.D. 581 (1975)
5 IBMA 293; 82 I.D. 602 (1975)
5 IBMA 338; 82 I.D. 622 (1975)
819(a)(1)----------4 IBMA 196; 82 I.D. 264 (1975)
5 IBMA 141 (Sept. 22, 1975)
5 IBMA 185; 82 I.D. 506 (1975)
819(a)(3)----------4 IBMA 198; 82 I.D. 264 (1975)
5 IBMA 185; 82 I.D. 506 (1975)
819(a)(4)----------5 IBMA 115; 82 I.D. 434 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
819(b)----------4 IBMA 139; 82 I.D. 221 (1975)
819(c)----------5 IBMA 115; 82 I.D. 434 (1975)
820----------5 IBMA 74; 82 I.D. 392 (1975)
820(a)----------4 IBMA 1; 82 I.D. 22 (1975)
4 IBMA 259; 82 I.D. 289 (1975)
5 IBMA 74; 82 I.D. 392 (1975)
820(b)(1)(A)--------5 IBMA 306; 82 I.D. 607 (1975)
861----------5 IBMA 74; 82 I.D. 392 (1975)
861(c)----------4 IBMA 74; 82 I.D. 102 (1975)
4 IBMA 130; 82 I.D. 195 (1975)
5 IBMA 36; 82 I.D. 362 (1975)
5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 231; 82 I.D. 553 (1975)
861(d)----------4 IBMA 74; 82 I.D. 102 (1975)
5 IBMA 231; 82 I.D. 553 (1975)
862(a)----------4 IBMA 184; 82 I.D. 250 (1975)
5 IBMA 231; 82 I.D. 553 (1975)
863(h)(1)----------5 IBMA 293; 82 I.D. 602 (1975)
864(a)----------4 IBMA 52; 82 I.D. 89 (1975)
5 IBMA 139; 82 I.D. 221 (1975)
865(d)----------5 IBMA 170; 82 I.D. 457 (1975)
865(g)----------5 IBMA 155; 82 I.D. 450 (1975)
868(b)----------4 IBMA 273; 82 I.D. 295 (1975)
870(d)----------22 IBLA 44 (Sept. 15, 1975)
871(c)----------5 IBMA 304 (Dec. 15, 1975)
873(a)----------5 IBMA 115; 82 I.D. 434 (1975)
874(f)----------4 IBMA 74; 82 I.D. 102 (1975)
876----------5 IBMA 268; 82 I.D. 581 (1975)
878(g)(1)----------5 IBMA 293; 82 I.D. 602 (1975)
878(g)(2)----------5 IBMA 293; 82 I.D. 602 (1975)
878(i)----------5 IBMA 185; 82 I.D. 506 (1975)
956----------5 IBMA 74; 82 I.D. 392 (1975)
5 IBMA 306; 82 I.D. 607 (1975)
957----------5 IBMA 306; 82 I.D. 607 (1975)
1001(e)----------21 IBLA 304 (Aug. 14, 1975)
1003----------19 IBLA 167 (Mar. 17, 1975)
19 IBLA 185 (Mar. 18, 1975)
21 IBLA 133 (July 14, 1975)
21 IBLA 304 (Aug. 14, 1975)
1006----------19 IBLA 167 (Mar. 17, 1975)
1020(b)----------21 IBLA 352 (Aug. 25, 1975)

TITLE 31:

sec. 203----------IBCA-994-5-73; 82 I.D. 427 (1975)
IBCA-994-5-73 (Jan. 14, 1975)
483a----------20 IBLA 120 (Apr. 25, 1975)
20 IBLA 302 (May 30, 1975)

TITLE 40:

sec. 471 et seq.---------22 IBLA 242 (Oct. 22, 1975)
472(d)----------22 IBLA 242 (Oct. 22, 1975)

TITLE 41:

sec. 15----------IBCA-994-5-73; 82 I.D. 427 (1975)
IBCA-994-5-73 (Jan. 14, 1975)

TITLE 42:

sec. 203(a)(2)----------1 OHA 137 (July 15, 1975)
2000a et seq.--------19 IBLA 178 (Mar. 18, 1975)
4321 et seq.---------18 IBLA 359 (Jan. 30, 1975)

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TITLE 42 (Continued):

sec. 4331----------22 IBLA 177 (Sept. 30, 1975)
4332----------22 IBLA 177 (Sept. 30, 1975)
4333----------22 IBLA 177 (Sept. 30, 1975)
4601----------1 OHA 78 (Jan. 7, 1975)
1 OHA 115 (June 3, 1975)
1 OHA 170 (Sept. 18, 1975)
1 OHA 221 (Sept. 24, 1975)
1 OHA 226 (Oct. 14, 1975)
4601(a)----------1 OHA 170 (Sept. 18, 1975)
4601(7)----------1 OHA 170 (Sept. 18, 1975)
4601(8)----------1 OHA 229 (Nov. 13, 1975)
4601 et seq.---------1 OHA 86 (Feb. 12, 1975)
1 OHA 170 (Sept. 18, 1975)
1 OHA 229 (Nov. 13, 1975)
4602(a)----------1 OHA 157 (Aug. 8, 1975)
1 OHA 163 (Sept. 2, 1975)
4621----------1 OHA 229 (Nov. 13, 1975)
4622----------1 OHA 78 (Jan. 7, 1975)
1 OHA 86 (Feb. 12, 1975)
1 OHA 110 (Apr. 14, 1975)
1 OHA 130 (July 2, 1975)
1 OHA 157 (Aug. 8, 1975)
1 OHA 163 (Sept. 2, 1975)
1 OHA 256 (Dec. 3, 1975)
4622(a)----------1 OHA 170 (Sept. 18, 1975)
4622(b)----------1 OHA 86 (Feb. 12, 1975)
1 OHA 106 (Feb. 24, 1975)
4622(c)----------1 OHA 170 (Sept. 18, 1975)
1 OHA 229 (Nov. 13, 1975)
4623----------1 OHA 78 (Jan. 7, 1975)
1 OHA 110 (Apr. 14, 1975)
1 OHA 157 (Aug. 8, 1975)
1 OHA 229 (Nov. 13, 1975)
4623(a)(1)(a)--------1 OHA 137 (July 15, 1975)
1 OHA 229 (Nov. 13, 1975)
4623(a)(1)(c)--------1 OHA 86 (Feb. 12, 1975)
1 OHA 106 (Feb. 24, 1975)
1 OHA 170 (Sept. 18, 1975)
4624----------1 OHA 86 (Feb. 12, 1975)
1 OHA 229 (Nov. 13, 1975)
4624(1)----------1 OHA 86 (Feb. 12, 1975)
4624(2)----------1 OHA 86 (Feb. 12, 1975)
1 OHA 106 (Feb. 24, 1975)
4625----------1 OHA 86 (Feb. 12, 1975)
4625(c)(5)----------1 OHA 229 (Nov. 13, 1975)
4633----------1 OHA 157 (Aug. 8, 1975)
1 OHA 163 (Sept. 2, 1975)
1 OHA 256 (Dec. 3, 1975)
4651----------1 OHA 157 (Aug. 8, 1975)
1 OHA 163 (Sept. 2, 1975)
4653----------1 OHA 121 (June 5, 1975)
4654----------1 OHA 229 (Nov. 13, 1975)

TITLE 43:

sec. 31----------20 IBLA 149 (May 5, 1975)
21 IBLA 199 (July 30, 1975)
141----------21 IBLA 116 (June 30, 1975)
22 IBLA 121 (Sept. 26, 1975)
23 IBLA 136 (Dec. 23, 1975)
23 IBLA 166 (Dec. 24, 1975)
142----------23 IBLA 136 (Dec. 23, 1975)
23 IBLA 166 (Dec. 24, 1975)
158----------20 IBLA 296 (May 27, 1975)
161----------22 IBLA 8; 82 I.D. 432 (1975)
161 et seq.---------20 IBLA 23 (Apr. 16, 1975)
20 IBLA 129 (May 5, 1975)
23 IBLA 136 (Dec. 23, 1975)
164----------19 IBLA 118 (Mar. 5, 1975)
20 IBLA 129 (May 5, 1975)
22 IBLA 191 (Oct. 15, 1975)
182----------19 IBLA 118 (Mar. 5, 1975)
185----------23 IBLA 155 (Dec. 23, 1975)
190----------4 IBIA 147; 82 I.D. 521 (1975)
212----------19 IBLA 379; 82 I.D. 123 (1975)
213----------22 IBLA 8; 82 I.D. 432 (1975)
270----------18 IBLA 345 (Jan. 14, 1975)
20 IBLA 129 (May 5, 1975)
22 IBLA 8; 82 I.D. 432 (1975)
23 IBLA 59 (Dec. 11, 1975)

TITLE 43 (Continued):

sec. 270-1----------18 IBLA 418 (Feb. 10, 1975)
19 IBLA 68 (Feb. 25, 1975)
19 IBLA 283 (Apr. 7, 1975)
20 IBLA 169 (May 7, 1975)
20 IBLA 284 (May 27, 1975)
21 IBLA 54 (June 18, 1975)
21 IBLA 264 (Aug. 11, 1975)
21 IBLA 292 (Aug. 11, 1975)
22 IBLA 20 (Sept. 9, 1975)
22 IBLA 54 (Sept. 17, 1975)
22 IBLA 296 (Nov. 3, 1975)
270-1 et seq.-------22 IBLA 38 (Sept. 10, 1975)
22 IBLA 191 (Oct. 15, 1975)
23 IBLA 134 (Dec. 23, 1975)
270-1-270-3---------20 IBLA 162 (May 5, 1975)
20 IBLA 290 (May 27, 1975)
20 IBLA 387 (June 16, 1975)
21 IBLA 71 (June 25, 1975)
21 IBLA 116 (June 30, 1975)
21 IBLA 152 (July 16, 1975)
21 IBLA 157 (July 21, 1975)
21 IBLA 173 (July 25, 1975)
21 IBLA 181 (July 25, 1975)
21 IBLA 207 (July 30, 1975)
21 IBLA 223 (July 31, 1975)
21 IBLA 230 (Aug. 1, 1975)
21 IBLA 248 (Aug. 11, 1975)
21 IBLA 258 (Aug. 11, 1975)
21 IBLA 326 (Aug. 14, 1975)
21 IBLA 347 (Aug. 18, 1975)
22 IBLA 41 (Sept. 15, 1975)
22 IBLA 56 (Sept. 17, 1975)
22 IBLA 104 (Sept. 22, 1975)
22 IBLA 153 (Sept. 30, 1975)
22 IBLA 191 (Oct. 15, 1975)
22 IBLA 213 (Oct. 15, 1975)
22 IBLA 233 (Oct. 22, 1975)
22 IBLA 247 (Oct. 22, 1975)
22 IBLA 266 (Oct. 30, 1975)
22 IBLA 287 (Oct. 30, 1975)
22 IBLA 291 (Nov. 3, 1975)
22 IBLA 388 (Nov. 24, 1975)
22 IBLA 392 (Nov. 24, 1975)
23 IBLA 17 (Nov. 26, 1975)
23 IBLA 36 (Dec. 2, 1975)
23 IBLA 54 (Dec. 4, 1975)
23 IBLA 77 (Dec. 12, 1975)
23 IBLA 79 (Dec. 12, 1975)
23 IBLA 81 (Dec. 12, 1975)
23 IBLA 86 (Dec. 16, 1975)
23 IBLA 88 (Dec. 16, 1975)
23 IBLA 91 (Dec. 18, 1975)
23 IBLA 95 (Dec. 18, 1975)
23 IBLA 99 (Dec. 18, 1975)
23 IBLA 120 (Dec. 23, 1975)
23 IBLA 128 (Dec. 23, 1975)
23 IBLA 131 (Dec. 23, 1975)
23 IBLA 145 (Dec. 23, 1975)
23 IBLA 151 (Dec. 23, 1975)
23 IBLA 159 (Dec. 23, 1975)
23 IBLA 170 (Dec. 29, 1975)
270-2----------18 IBLA 418 (Feb. 10, 1975)
19 IBLA 68 (Feb. 25, 1975)
21 IBLA 292 (Aug. 11, 1975)
22 IBLA 20 (Sept. 9, 1975)
22 IBLA 54 (Sept. 17, 1975)
270-3----------18 IBLA 418 (Feb. 10, 1975)
19 IBLA 68 (Feb. 25, 1975)
20 IBLA 169 (May 7, 1975)
21 IBLA 264 (Aug. 11, 1975)
21 IBLA 292 (Aug. 11, 1975)
22 IBLA 54 (Sept. 17, 1975)
270-5----------18 IBLA 345 (Jan. 14, 1975)
22 IBLA 291 (Nov. 3, 1975)
270-6----------18 IBLA 345 (Jan. 14, 1975)
270-11---------20 IBLA 284 (May 27, 1975)
274------------20 IBLA 319 (June 4, 1975)
21 IBLA 124 (July 14, 1975)
21 IBLA 330 (Aug. 18, 1975)
279------------19 IBLA 118 (Mar. 5, 1975)
20 IBLA 129 (May 5, 1975)

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5 IRMA 51; 82 I.D. 368 (1975)
5 IRMA 74; 82 I.D. 392 (1975)
5 IRMA 100; 82 I.D. 409 (1975)
5 IRMA 128; 82 I.D. 439 (1975)
754----------5 IRMA 36; 82 I.D. 362 (1975)
5 IRMA 74; 82 I.D. 392 (1975)
755----------4 IRMA 241; 82 I.D. 284 (1975)
756----------4 IRMA 1; 82 I.D. 22 (1975)
4 IRMA 30; 82 I.D. 36 (1975)
4 IRMA 61; 82 I.D. 96 (1975)
4 IRMA 112; 82 I.D. 163 (1975)
4 IRMA 139; 82 I.D. 221 (1975)
4 IRMA 184; 82 I.D. 250 (1975)
4 IRMA 198; 82 I.D. 264 (1975)
4 IRMA 224; 82 I.D. 277 (1975)
4 IRMA 241; 82 I.D. 284 (1975)
4 IRMA 298; 82 I.D. 311 (1975)
5 IRMA 12; 82 I.D. 353 (1975)
5 IRMA 65; 82 I.D. 375 (1975)
5 IRMA 74; 82 I.D. 392 (1975)
5 IRMA 115; 82 I.D. 434 (1975)
5 IRMA 144; 82 I.D. 445 (1975)
5 IRMA 155; 82 I.D. 450 (1975)
5 IRMA 185; 82 I.D. 506 (1975)
5 IRMA 259; 82 I.D. 578 (1975)
5 IRMA 268; 82 I.D. 581 (1975)
758----------4 IRMA 1; 82 I.D. 22 (1975)
4 IRMA 259; 82 I.D. 289 (1975)
4 IRMA 298; 82 I.D. 311 (1975)
5 IRMA 74; 82 I.D. 392 (1975)
5 IRMA 115; 82 I.D. 434 (1975)
765----------5 IRMA 74; 82 I.D. 392 (1975)
766----------4 IRMA 61; 82 I.D. 96 (1975)
4 IRMA 74; 82 I.D. 102 (1975)
4 IRMA 130; 82 I.D. 195 (1975)
4 IRMA 184; 82 I.D. 250 (1975)
4 IRMA 273; 82 I.D. 295 (1975)
5 IRMA 36; 82 I.D. 362 (1975)
5 IRMA 259; 82 I.D. 578 (1975)
772----------4 IRMA 30; 82 I.D. 36 (1975)
774----------4 IRMA 52; 82 I.D. 89 (1975)
4 IRMA 61; 82 I.D. 96 (1975)
4 IRMA 139; 82 I.D. 221 (1975)
4 IRMA 166; 82 I.D. 234 (1975)
4 IRMA 198; 82 I.D. 264 (1975)
4 IRMA 224; 82 I.D. 277 (1975)
775----------4 IRMA 198; 82 I.D. 264 (1975)
777----------5 IRMA 170; 82 I.D. 457 (1975)
778----------4 IRMA 224; 82 I.D. 277 (1975)
5 IRMA 155; 82 I.D. 450 (1975)

83 STAT (Continued):

780----------4 IBMA 273; 82 I.D. 295 (1975)
785----------5 IBMA 115; 82 I.D. 434 (1975)
787----------4 IBMA 74; 82 I.D. 102 (1975)
791----------4 IBMA 74; 82 I.D. 102 (1975)
5 IBMA 36; 82 I.D. 362 (1975)
5 IBMA 185; 82 I.D. 506 (1975)
803----------4 IBMA 139; 82 I.D. 221 (1975)
5 IBMA 74; 82 I.D. 392 (1975)

84 STAT:

sec. 202(a)----------1 OHA 157 (Aug. 8, 1975)
202(c)----------1 OHA 157 (Aug. 8, 1975)
203----------1 OHA 157 (Aug. 8, 1975)
206----------19 IBLA 261 (Mar. 31, 1975)
20 IBLA 206 (May 8, 1975)
21 IBLA 287 (Aug. 11, 1975)
22 IBLA 130 (Sept. 26, 1975)
213----------1 OHA 157 (Aug. 8, 1975)
214----------1 OHA 157 (Aug. 8, 1975)
806----------20 IBLA 206 (May 8, 1975)
809----------22 IBLA 338 (Nov. 14, 1975)
1874----------3 IBIA 243; 82 I.D. 55 (1975)
1894----------1 OHA 86 (Feb. 12, 1975)
1 OHA 115 (June 3, 1975)
1 OHA 170 (Sept. 18, 1975)
1 OHA 221 (Sept. 24, 1975)
1 OHA 226 (Oct. 14, 1975)
1 OHA 229 (Nov. 13, 1975)

85 STAT:

sec. 688----------M-36880; 82 I.D. 325 (1975)
19 IBLA 242 (Mar. 27, 1975)
19 IBLA 316 (Apr. 7, 1975)
19 IBLA 320 (Apr. 7, 1975)
20 IBLA 50 (Apr. 23, 1975)
20 IBLA 59; 82 I.D. 174 (1975)
20 IBLA 174 (May 7, 1975)
696----------20 IBLA 50 (Apr. 23, 1975)
708----------20 IBLA 59; 82 I.D. 174 (1975)
710----------20 IBLA 162 (May 5, 1975)
21 IBLA 54 (June 18, 1975)

86 STAT:

sec. 64----------4 IBIA 65; 82 I.D. 261 (1975)

87 STAT:

sec. 466----------3 IBIA 266 (Feb. 25, 1975)
468----------3 IBIA 266 (Feb. 25, 1975)

88 STAT:

sec. 1712----------4 IBIA 134; 82 I.D. 452 (1975)
2094----------21 IBLA 289 (Aug. 11, 1975)

(C) REVISED STATUTES

sec. 2332----------19 IBLA 255 (Mar. 31, 1975)
2476----------19 IBLA 139 (Mar. 7, 1975)

sec. 3477----------IBCA-994-5-73; 82 I.D. 427 (1975)
3737----------IBCA-994-5-73; 82 I.D. 427 (1975)

* * * * * * * * * * * *

COUNTS

PAYMENTS

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank because of uncollected funds, a decision canceling the lease will be affirmed; and the fact that the bank, after consultation with its depositor indicated that it would honor the check upon resubmission will not serve to avoid the lease cancellation where no bank error is shown.

Dale A. Spiegel, 19 IBLA 235 (Mar. 26, 1975)

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corporation, 22 IBLA 124 (Sept. 26, 1975)

ACCRETION

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

ACQUIRED LANDS

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Company, 20 IBLA 292 (May 27, 1975)

ACT OF FEBRUARY 8, 1887

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated * * *." Pending final action on the matter, public lands are not open to Indian allotment settlement and disposition following the filing and noting of an application by the Bureau of Land Management for a proposed withdrawal; regulation 43 CFR 2091.2-5(a) provides that the noting of an

ACT OF FEBRUARY 8, 1887--Continued

application for withdrawal on the official plats maintained in the proper land office shall temporarily segregate the subject land from settlement under the public land laws to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal. Following issuance of a public land order withdrawing the subject land, Indian allotment applications previously held in a suspense status are properly rejected.

Thurman Banks, et al., 22 IBLA 205 (Oct. 15, 1975)

ACT OF MARCH 3, 1891

Sec. 7 of the Act of Mar. 3, 1891, provides that no person or association of persons shall hold by assignment or otherwise, prior to the issue of patent, more than 320 acres of arid or desert lands; the terms "hold," "assignment" and "otherwise" are words of broad significance and will be defined in such manner to effectuate the purposes of the Act, to wit, to prevent anyone from holding more than 320 acres of desert lands to the exclusion of bona fide settlers or the entrymen of record.

Any person or association of persons who controls, possesses and receives substantial benefits from desert lands will be regarded as "holding" such lands within the meaning of the Act of Mar. 3, 1891.

United States v. Golden Grigg, et al., 19 IBLA 379 (Apr. 7, 1975) 82 I.D. 123

ACT OF AUGUST 18, 1894

An application filed by a State under the Act of Mar. 5, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act of 1894 must be rejected where the lands are withdrawn for stock-driveway purposes, and cannot be suspended pending consideration of a petition for reclassification of the lands as suitable for selection under the Carey Act.

A grant of lands to a State under the Carey Act of 1894 is not a grant in praesenti, vesting title to any particular lands as of the time of passage of the Act or by relation back upon fulfillment of the conditions imposed by the Act, but the allowance or rejection of an application by a State under the Act of Mar. 5, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act is a matter wholly within the discretion of the Department; and where the lands sought to be selected by the State are embraced within a stock-driveway withdrawal made by the

ACT OF AUGUST 18, 1894--Continued

Secretary of the Interior under authority of law, they are not, so long as such withdrawal remains in force, subject to any claim of the State under the Carey Act.

Idaho Department of Water Resources, 21 IBLA 210 (July 31, 1975)

ACT OF APRIL 23, 1904

Sec. 8 of the Act of Apr. 23, 1904, 33 Stat. 302, providing for survey and allotment of lands within the Flathead Indian Reservation, excepts from mineral eotry those lands classified as "timber land" by a Presidential Commission, and the Department of the Interior has no authority to overturn such classification and declare the "timber lands" more valuable as "mineral lands."

Montana Copper King Mining Co., et al., 20 IBLA 30 (Apr. 16, 1975)

ACT OF MARCH 5, 1910

An application filed by a State under the Act of Mar. 5, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act of 1894 must be rejected where the lands are withdrawn for stock-driveway purposes, and cannot be suspended pending consideration of a petition for reclassification of the lands as suitable for selection under the Carey Act.

A grant of lands to a State under the Carey Act of 1894 is not a grant in praesenti, vesting title to any particular lands as of the time of passage of the Act or by relation back upon fulfillment of the conditions imposed by the Act, but the allowance or rejection of an application by a State under the Act of Mar. 5, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act is a matter wholly within the discretion of the Department; and where the lands sought to be selected by the State are embraced within a stock-driveway withdrawal made by the Secretary of the Interior under authority of law, they are not, so long as such withdrawal remains in force, subject to any claim of the State under the Carey Act.

Idaho Department of Water Resources, 21 IBLA 210 (July 31, 1975)

ACT OF JANUARY 25, 1927

Where, after Statehood, a designated school section is surveyed and returned as mineral land (coal) known to be mineral in character prior to the date when the rights of the State would have

ACT OF JANUARY 25, 1927--Continued

attached, and where prior to the Act of Jan. 25, 1927 (44 Stat. 1026), the land is withdrawn for national forest purposes, title to the section did not pass to the State.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

ACT OF MARCH 4, 1927

Under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

Edward F. Naughton, 23 IBLA 134 (Dec. 23, 1975)

ACT OF JULY 7, 1958

The filing of a State selection application under sec. 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a native Village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973).

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

ACT OF OCTOBER 8, 1964

Where the holder of mineral leases to the Lake Mead National Recreation Area fails to mine and produce minerals within the time prescribed by the lease for reasons not beyond the control of the lessee, the leases are not in good standing and therefore are not subject to renewal.

It is a proper exercise of discretion to refuse to renew mineral leases in the Lake Mead National Recreation Area where the lessee failed to commence mining and produce minerals as required by regulation and by the terms of the lease for reasons which were attributable to the lessee.

Apache Oro Company, 22 IBLA 331 (Nov. 11, 1975)

ACT OF DECEMBER 24, 1970

Section 4 of Geothermal Steam Act of 1970 authorizes competitive bidding as sole basis for issuance of geothermal leases for lands determined to be within a KGRA.

ACT OF DECEMBER 24, 1970--Continued

Section 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (Feb. 7, 1975) 82 I.D. 60

Section 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during January 1974 filing period, and State Office rejections of appellant's January 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

ADDITIONAL HOMESTEADS

The land in an additional homestead entry application under the Act of Apr. 28, 1904, as amended, 43 U.S.C. § 213 (1970), must be contiguous to the applicant's original homestead. Neither that Act nor regulations issued thereunder require that tracts of land in such an additional entry application be contiguous to each other. The requirement of 43 CFR 2567.1(c) that land in a homestead entry application in Alaska must be in a contiguous body is maintained by the fact that the land in the additional entry must be contiguous to the original homestead.

John C. Briggs, 22 IBLA 8 (Sept. 4, 1975) 82 I.D. 432

ADMINISTRATIVE AUTHORITY
(See also Delegation of Authority, Federal Employees and Officers, Secretary of the Interior)

GENERALLY

The Bureau of Land Management, in the exercise of its discretionary power to issue special land use permits, may establish special fee assessments for off-road vehicle (ORV) events.

Walt's Racing Association, 18 IBLA 359 (Jan. 30, 1975)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The failure by an oil and gas lease assignee to timely file the requisite bond as required by an initial State Office decision cannot be relied upon by the assignor as a basis for protesting a subsequent decision which reconsiders and grants a request for assignment approval, for it is the Department alone which may assert such default as a basis for denying a subsequent assignment approval request.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

The issuance of a public airport lease on national resource lands lies within the discretion of the Secretary of the Interior. The Department may require an applicant for a public airport lease to accept special stipulations in order to protect the environmental quality of the land, so long as the stipulations are not inconsistent with other reasonable requirements of the Bureau of Land Management or Federal Aviation Administration.

A. W. Brothers, 19 IBLA 144 (Mar. 7, 1975)

The Bureau of Land Management may assert, in its discretion, failure to timely file assignment instruments as a basis for denying approval to an assignment where intervening assignees or other adverse interests are involved.

James V. O'Kane, F. Kenneth Millhollen, 19 IBLA 171 (Mar. 18, 1975)

The issuance of a special land-use permit is discretionary, and the Bureau of Land Management may reject a special land-use permit application when the proposed use would adversely affect the public interest, and may offer, in the alternative, a permit providing for use consonant with proper management of national resource lands.

Jerry Tecklin, Leonard Brackett, 20 IBLA 308 (May 30, 1975)

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors involved, and no sufficient basis to disturb the decision is shown.

Boulder City Aero Club, Inc., 21 IBLA 343 (Aug. 18, 1975)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Reliance upon erroneous or incomplete information provided by Bureau of Land Management employees cannot create any rights not authorized by law.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Margaret Hughey Hugus, 22 IBLA 146 (Sept. 30, 1975)

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for non-compliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

ESTOPPEL

Generally, the Government is not estopped from demanding oil and gas lease royalty payments it is owed, even if its employees may have made prior mistakes in accepting or computing the royalty.

Gulf Oil Corp., et al., 21 IBLA 1 (June 16, 1975)

Reliance upon erroneous or incomplete information provided by Bureau of Land Management employees cannot create any rights not authorized by law.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Margaret Hughey Hugus, 22 IBLA 146 (Sept. 30, 1975)

The Department of the Interior is not estopped from denying the legality of a payment in lieu of forfeiture provision inserted in a Recreation and Public Purposes Act patent when such denial works no serious injustice against the patentee and implementation of the provision would harm the public interest by divesting the Government of all jurisdiction over the patented land, thus, precluding enforcement of the Recreation and Public Purposes Act requirement that lands patented under the Act be devoted to a definitely proposed project for the benefit of the public.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

A Native allotment applicant is charged with notice of the official land records of the Bureau of Land Management. No estoppel will result from a delay in the rejection of a Native allotment where the basis of the decision is that the land was segregated by a State selection application prior to commencement of occupancy, the delay was not unreasonable, the State selection was a matter of public record, and no misrepresentations were made to the applicant.

Roselyn Isaac, 23 IBLA 124 (Dec. 23, 1975)

ADMINISTRATIVE PRACTICE

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crapo, Richard L. Crapo, 19 IBLA 208 (Mar. 21, 1975)

Where the record does not clearly show whether either or both of two grazing lease applicants are preference right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

Elmer M. Johnson, 20 IBLA 111 (Apr. 25, 1975)

When a coal lease applicant asserts, on appeal, facts which may show it to be entitled to favorable consideration of its lease application under the short-term need criteria promulgated by the Department, the decision rejecting the lease application will be set aside and the case remanded for further consideration.

Idaho Power Company, 20 IBLA 125 (Apr. 28, 1975)

A regulatory change in the definition of the phrase "primary term" of an oil and gas lease is not an order or consent of the Secretary of the Interior to suspend operations under an oil and gas lease.

Inexco Oil Company, 20 IBLA 134 (May 5, 1975)

A regulation pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows settlement rights to be initiated while a permit issued under that Act is in existence. The

ADMINISTRATIVE PRACTICE--Continued

policy manifest in that regulation may be followed, in the exercise of the Secretary's discretion, to permit consideration of a native allotment applicant's occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927, and the regulation was promulgated after initiation of the occupancy.

Kristeen J. Burke, Joe N. Melovedoff, Victor Melovedoff, 20 IBLA 162 (May 5, 1975)

A Bureau of Land Management State Office may reconsider one of its decisions prior to the filing of an appeal in the case, but the filing of an appeal terminates that authority.

A person who drafts and submits an agreement to this Department must bear the burden of any ambiguity in the document if the Department's interpretation is reasonable.

An original letter is not needed to withdraw a lease offer. The requirements are that the withdrawal is properly filed and the person making the withdrawal is properly identified.

A person signing an assumed name is responsible just as if he signed his own name.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated Mar. 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Feb. 1975 simultaneous filing period.

V. J. Malloy, 20 IBLA 327 (June 6, 1975)

ADMINISTRATIVE PRACTICE--Continued

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

Knute F. Lind, 21 IBLA 81 (June 27, 1975)

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piece-meal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

Until a final authoritative judicial determination is made of the title to geothermal resources in lands patented with a reservation of all minerals to the United States, a geothermal lease application which omits such patented lands from a section will not be considered in compliance with 43 CFR 3210.2-1(c) requiring all available lands in a section to be described in the lease application. However, the application may be suspended as to that section, rather than rejected, until the title question is resolved.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with certain title information in the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information.

A Bureau of Land Management Office has no jurisdiction to take further action on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

ADMINISTRATIVE PRACTICE--Continued

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with reasonable title information in the county recorder's offices as a precondition to lease issuance.

Jean Oakason, 22 IBLA 311 (Nov. 10, 1975)

ADMINISTRATIVE PROCEDURE
(See also Appeals, Contests and Protests, Hearings, Rules of Practice)

GENERALLY

The denial of a petition for classification and the rejection of an application under the Recreation and Public Purposes Act for a lease of lands which have been withdrawn and which are also subject to a state selection application which, under the terms of the withdrawal order, may be allowed, does not violate the tenets of due process because the disposition of the petition application is at the discretion of the Secretary, and the petitioner applicant has no vested right protected by constitutional guarantees or by the Administrative Procedure Act.

Mountaineering Club of Alaska, Inc., 19 IBLA 198 (Mar. 19, 1975)

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the result that the claimants were thereby induced to do so, to their ultimate damage.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

The Department of the Interior has jurisdiction, in proper proceedings, to determine the validity of mining claims on federal lands.

United States v. A. B. Fleming, et al., 20 IBLA 83 (Apr. 24, 1975)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

The rejection of an application for the purchase of land under the Recreation and Public Purposes Act does not violate the tenets of due process since the disposition of the application is at the discretion of the Department, and the applicant has acquired no vested right protected by the United States Constitution.

Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (Oct. 7, 1975)

ADJUDICATION

As only nonmineral lands may be appropriated under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate the claim unless it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

In order for an assertion of competitive interest to create a bar to the allowance of an application to modify an existing coal lease by the addition of contiguous land, the competitive interest asserted must be identifiable, substantial and genuine, and not merely speculative or casual.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

ADMINISTRATIVE LAW JUDGES

While a mining contest is within the jurisdiction of an Administrative Law Judge, he may reopen the hearing for the production of further evidence before he makes his decision.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

An Administrative Law Judge has a duty to conduct a hearing in such a manner that all available relevant facts in a mining contest will be adduced. He should take special care to do so where a party is without counsel and there is confusion concerning the status of purported tendered evidence.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

STRATIVE PROCEDURE--Continued

ADMINISTRATIVE PROCEDURE ACT

The ultimate findings and decision of the Administrative Law Judge adopted by the Commissioner of Indian Affairs will not be set aside upon administrative review where they are supported by substantial evidence.

Administrative Appeal of Mary Ann Topsseh Combs (Flathead Allottee No. 1648) v. Commissioner of Indian Affairs, 4 IBIA 27 (Apr. 28, 1975)
82 I.D. 184

A mining claim is a claim to property which may not be declared invalid except in accordance with due process of law. Due process consists of proper notice and opportunity for an agency hearing in accordance with the Administrative Procedure Act, and it suffices if the claimant is properly notified and afforded the opportunity to be heard. But there is no requirement that a hearing be held where the contestee fails to avail himself of the opportunity for a hearing within the time provided.

United States v. James R. and Sammy B. Ragsdale, 20 IBLA 348 (June 11, 1975)

The ultimate findings, conclusions and order of the Administrative Law Judge will not be set aside upon administrative review where they are supported by substantial evidence.

tate of Evans Ingatuah, 4 IBIA 103 (July 29, 1975)
82 I.D. 352

Where the answer to a mining contest complaint denying the charges is timely filed by one contestee, but is untimely filed by all other contestees, the charges as to those contestees filing untimely answers will be taken as admitted and their interests in the mining claims will be declared null and void. The contestee who filed a timely answer is entitled to a hearing as to the validity of the claims.

United States v. Albert S. Hunter, et al., 22 IBLA 28 (Sept. 10, 1975)

The Secretarial instruction of Oct. 18, 1973, which mandates a showing by a Native allotment applicant of 5 years of occupancy prior to a withdrawal of the land, was not required to be published as rulemaking since 5 U.S.C. § 553(a)(2) (1970) exempts from its ambit matters pertaining to public property.

Heirs of Dorothy Gordon, 22 IBLA 213 (Oct. 15, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE PROCEDURE ACT--Continued

the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

A cattle trespass decision rendered by an administrative law judge may be set aside and remanded where the decision does not include a statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion as required for initial decisions under 5 U.S.C. § 557 (1970) and 43 CFR 4.475.

United States v. John J. Casey, 22 IBLA 358 (Nov. 14, 1975) 82 I.D. 546

ADMINISTRATIVE REVIEW

The ultimate findings and decision of the Administrative Law Judge adopted by the Commissioner of Indian Affairs will not be set aside upon administrative review where they are supported by substantial evidence.

Administrative Appeal of Mary Ann Topsseh Comba (Flathead Allottee No. 1648) v. Commissioner of Indian Affairs, 4 IBIA 27 (Apr. 28, 1975)
82 I.D. 184

The ultimate findings, conclusions and order of the Administrative Law Judge will not be set aside upon administrative review where they are supported by substantial evidence.

Estate of Evans Ingatuah, 4 IBIA 103 (July 29, 1975)
82 I.D. 352

BURDEN OF PROOF

When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

When a government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made; the Government's mineral examiner is not obliged to explore beyond the current workings of a mining claimant in attempting to verify a discovery.

United States v. Herbert Clark, 18 IBLA 368 (Jan. 30, 1975)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

A determination by a District Manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

John T. Martha, 19 IBLA 97 (Mar. 4, 1975)

In a mining contest a mining claimant is the true proponent under the Administrative Procedure Act, 5 U.S.C. § 556(d), of a rule or order that he has complied with the mining laws, and he has the ultimate burden of proof -- the risk of non-persuasion -- to show by a preponderance of the evidence that there is a valuable mineral deposit on the claim, when the Government has made a prima facie case of lack of such a discovery.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

When the Government contests a mining claim on a charge of no discovery it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

United States v. Charles J. MacIver, et al., 20 IBLA 352 (June 11, 1975)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. C. V. Ballenbeck, et al., 21 IBLA 296 (Aug. 11, 1975)

When the Government contests a mining claim and establishes a prima facie case that contestee has not made a discovery of a locatable mineral deposit, the burden devolves on contestee to establish by a preponderance of the evidence that the claim has been validated by the discovery of a locatable mineral deposit.

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

A bog iron ore deposit does not meet the prudent man-marketability test where the evidence shows that contestee could only develop the iron deposit for sale for metallurgical uses after further exploration to establish a higher grade or greater tonnage of ore, or upon future favorable developments in the iron ore market.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

DECISIONS

A cattle trespass decision rendered by an administrative law judge may be set aside and remanded where the decision does not include a statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion as required for initial decisions under 5 U.S.C. § 557 (1970) and 43 CFR 4.475.

Where a grazing district cattle trespass complaint refers to previous trespasses by the base property owner, he is served with the complaint, and the record indicates he intervened at the hearing thereon but the decision issued makes no mention thereof, the decision appealed from may be set aside and remanded for clarification.

United States v. John J. Casey, 22 IBLA 358 (Nov. 14, 1975) 82 I.D. 546

HEARINGS

When one whose application for patent for a mining claim has been rejected requests a hearing to present evidence on the controlling issues of fact involved in the rejection of the application, such request must be granted.

Estate of Arthur C. W. Bowen, Deceased, 18 IBLA 379 (Jan. 30, 1975)

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

NISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Where determination of issues of fact are appropriate and necessary for the exercise of Secretarial discretion, the Hearings Division of the Office of Hearings and Appeals will schedule and hold a hearing at the Secretary's direction to serve as a basis for findings of fact.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (Feb. 25, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

A request for a hearing in connection with an appeal will not be granted where undisputed facts are of record, and the determination rests on legal conclusions based on such facts.

Concho Petroleum Company and J. C. Karcher, 22 IBLA 139 (Sept. 26, 1975)

A headquarters site claim located prior to a withdrawal may be declared invalid by the Bureau of Land Management without awaiting the filing of a patent application where there has been insufficient compliance with the law to appropriate the land before the withdrawal. However, the Bureau should follow appropriate procedures. These should include giving notice to the claimant to show cause why the claim should not be invalidated where the notice of location does not show adequate compliance with the law sufficient to preclude the withdrawal, and initiating a contest and affording an opportunity for a hearing where there are disputed facts on the compliance with the law.

Richard T. Pope, 22 IBLA 374 (Nov. 17, 1975)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without opportunity for hearing.

Hathern Lewis Stacy, 23 IBLA 166 (Dec. 24, 1975)

INITIAL DECISION

The ultimate findings and decision of the Administrative Law Judge adopted by the Commissioner of Indian Affairs will not be set aside upon administrative review where they are supported by substantial evidence.

Administrative Appeal of Mary Ann Topsseh Combs (Flathead Allottee No. 1648) v. Commissioner of Indian Affairs, 4 IBIA 27 (Apr. 28, 1975) 82 I.D. 184

The ultimate findings, conclusions and order of the Administrative Law Judge will not be set aside upon administrative review where they are supported by substantial evidence.

Estate of Evans Ingatuah, 4 IBIA 103 (July 29, 1975) 82 I.D. 352

RULE MAKING

Where notice of proposed rulemaking to change certain filing fees and to impose other charges has been published in the Federal Register, but no final rules have been published, the old schedule of fees will remain in effect until such time as the new rules are finally adopted, published and made effective.

Arizona Public Service Company, 20 IBLA 120 (Apr. 25, 1975)

SUBSTANTIAL EVIDENCE

The ultimate findings and decision of the Administrative Law Judge adopted by the Commissioner of Indian Affairs will not be set aside upon administrative review where they are supported by substantial evidence.

Administrative Appeal of Mary Ann Topsseh Combs (Flathead Allottee No. 1648) v. Commissioner of Indian Affairs, 4 IBIA 27 (Apr. 28, 1975) 82 I.D. 184

The ultimate findings, conclusions and order of the Administrative Law Judge will not be set aside upon administrative review where they are supported by substantial evidence.

Estate of Evans Ingatuah, 4 IBIA 103 (July 29, 1975) 82 I.D. 352

AIRPORTS

The issuance of a public airport lease on national resource lands lies within the discretion of the Secretary of the Interior. The Department may require an applicant for a public airport lease to accept special stipulations in order to protect the environmental quality of the land, so long as the stipulations are not inconsistent with other reasonable requirements of the Bureau of Land Management or Federal Aviation Administration.

A. W. Brothers, 19 IBLA 144 (Mar. 7, 1975)

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors involved, and no sufficient basis to disturb the decision is shown.

Boulder City Aero Club, Inc., 21 IBLA 343 (Aug. 18, 1975)

ALASKA

GENERALLY

Settlement on a homestead claim in Alaska two days prior to a withdrawal of the land does not except the land from the withdrawal where the claimant failed to file his notice of location within 90 days after settlement as required by the Act of Apr. 29, 1950, 64 Stat. 94, 43 U.S.C. §§ 270, 270-5, 270-6 (1970), and his notice is properly held to be unacceptable for recordation.

Gary Lee Slay, 18 IBLA 345 (Jan. 14, 1975)

A decision of the Bureau of Land Management rejecting a native allotment application because the land is within an oil shale withdrawal will be set aside and remanded for further consideration where the Secretary of the Interior has directed the Geological Survey to review its mineral classifications in Alaska and the applicant requests an opportunity to present evidence to dispute the classification.

Raymond Paneak, 19 IBLA 68 (Feb. 25, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III, 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

ALASKA--Continued

GENERALLY--Continued

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of Apr. 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

Donald J. Thomas, 22 IBLA 210 (Oct. 15, 1975)

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

A notice of location for a homesite which alleges only acts of occupancy and improvement insufficient to create any interest in the land is properly denied recordation.

Edward P. Dooley, 22 IBLA 338 (Nov. 14, 1975)

ALASKA--Continued

GENERALLY--Continued

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

GRAZING

A grazing lease issued in 1933 for reindeer under the Act of Mar. 4, 1927, became subject to the Reindeer Act of Sept. 1, 1937, and rules and regulations thereunder. Interpretations of the effect of grazing rights granted under the 1937 Act upon a native allotment applicant's claim of occupancy may be applied to such a lease, if they are not to the detriment of the lessee.

A regulation pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows settlement rights to be initiated while a permit issued under that Act is in existence. The policy manifest in that regulation may be followed, in the exercise of the Secretary's discretion, to permit consideration of a native allotment applicant's occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927, and the regulation was promulgated after initiation of the occupancy.

Kristeen J. Burke, Joe N. Melovedoff, Victor Melovedoff, 20 IBLA 162 (May 5, 1975)

The policy manifest in regulations pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows, in the exercise of the Secretary's discretion, consideration of a native allotment applicant's use and occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927.

Carl E. Malutin, et al., 21 IBLA 152 (July 16, 1975)

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

ALASKA--Continued

HEADQUARTERS SITES

If an applicant for a headquarters site does not allege facts that, if taken as true, show that she uses the site in connection with a trade, manufacture, or other productive industry, the Bureau of Land Management may cancel her claim without a hearing.

An applicant for a headquarters site does not establish that she is engaged in a trade, manufacture or other productive industry by showing an abandoned business which had only meager gross receipts.

In order to meet the headquarters site law requirements, all the requirements of use, being in a business venture, etc., must be accomplished by the time the statutory life of the claim expires.

LaVeta O. Schoephorster, 19 IBLA 90 (Mar. 3, 1975)

If an applicant for a headquarters site does not make the showings required by the regulations and establish his entitlement to purchase under the Act of March 3, 1927, 44 Stat. 1364, 43 U.S.C. § 687a (1970), his application may be rejected and his claim canceled without a hearing.

William T. Criner, 19 IBLA 149 (Mar. 13, 1975)

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

As only nonmineral lands may be appropriated under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate

ALASKA--Continued

HEADQUARTERS SITES--Continued

the claim unless it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

There can be no "valid existing right" in a claimant of a headquarters site on land withdrawn by Public Land Order No. 4582 unless a notice of location or application to purchase had been filed in accordance with the Act of Apr. 29, 1950. The filing of an application for a survey of omitted land did not by itself create any preference rights to the land.

Notices of location for headquarters sites must be accepted for filing by the authorized Bureau of Land Management office if the land has been subject to location during the preceding 90 days. The fact that land had been omitted from the original survey is not a valid reason for the Bureau of Land Management to refuse to record a properly filed notice of location for a headquarters site.

An application to purchase a headquarters site is subject to rejection if it is filed after the 5-year period from the filing of a notice of location of the claim, or, if no notice had been filed, it was filed more than 90 days after the land has been withdrawn.

Equitable adjudication is not appropriate where a headquarters site applicant has not substantially complied with the law.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

Donald J. Thomas, 22 IBLA 210 (Oct. 15, 1975)

ALASKA--Continued

HEADQUARTERS SITES--Continued

An applicant for a headquarters site patent is required to prove that he, or his employer, is engaged in a trade, manufacture, or other "productive industry," for which applicant uses the site as a headquarters personally (or by an employee, if the applicant is in business); the conduct of an enterprise from the site by a third party renting the site and the improvements of the applicant does not qualify.

John H. Huber, Frances L. Huber, 22 IBLA 216 (Oct. 15, 1975)

A headquarters site claim is invalid when occupancy of the site was initiated more than 90 days prior to the filing of a notice of location and an intervening state selection application has segregated the land.

William G. Fairbanks, 22 IBLA 255 (Oct. 23, 1975)

The mere filing of a notice of location for a headquarters site under 43 U.S.C. § 687a (1970) does not establish rights to land. If a claimant cannot also demonstrate the necessary use and occupancy of the site prior to the effective date of a withdrawal and establish a right of purchase, he does not have a "valid existing right" excepted from the withdrawal, and the withdrawal attaches to the land in the site.

Stephen P. Sorensen, 22 IBLA 258 (Oct. 24, 1975)

The filing of a notice of location for a headquarters site does not prevent a withdrawal from attaching to the land prior to the time the locator of the headquarters site performs the requisite acts with respect to use and occupancy necessary to establish the right to purchase.

A headquarters site claim located prior to a withdrawal may be declared invalid by the Bureau of Land Management without awaiting the filing of a patent application where there has been insufficient compliance with the law to appropriate the land before the withdrawal. However, the Bureau should follow appropriate procedures. These should include giving notice to the claimant to show cause why the claim should not be invalidated where the notice of location does not show adequate compliance with the law sufficient to preclude the withdrawal, and initiating a contest and affording an opportunity for a hearing where there are disputed facts on the compliance with the law.

Richard T. Pope, 22 IBLA 374 (Nov. 17, 1975)

HOMESITES

Under the Homesite Act of May 26, 1934, 48 Stat. 809, 43 U.S.C. § 687a (1970), an applicant must occupy land in a habitable house not less than five months each year for three years. Even if a two-year credit is allowed for military service there must be five months of occupancy for one year. Totaling lesser periods of occupancy over a number of entry years is not sufficient to meet the requirement.

ALASKA--Continued

HOMESITES--Continued

An applicant's statement that he resided on a homesite claim only on weekends for a substantial portion of a five-month period does not constitute the five-months occupancy required for a homesite under the Act of May 26, 1934, and an application which shows on its face that the requirements have not been met is properly rejected.

Prince A. Ryan, Jr., 18 IBLA 286 (Jan. 2, 1975)

Where request for reconsideration of Bureau of Land Management 1968 homesite decision is taken in 1974, appellant stating he was never served with decision, but where receipt in record shows service in 1968, reconsideration should be denied.

Hollis E. Justis, 21 IBLA 63 (June 25, 1975)

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of Apr. 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

A notice of location for a homesite which alleges only acts of occupancy and improvement insufficient to create any interest in the land is properly denied recordation.

Edward P. Dooley, 22 IBLA 338 (Nov. 14, 1975)

HOMESTEADS

Settlement on a homestead claim in Alaska two days prior to a withdrawal of the land does not except the land from the withdrawal where the claimant failed to file his notice of location within 90 days after settlement as required by the Act of Apr. 29, 1950, 64 Stat. 94, 43 U.S.C. §§ 270, 270-5, 270-6 (1970), and his notice is properly held to be unacceptable for recordation.

Gary Lee Slay, 18 IBLA 345 (Jan. 14, 1975)

ALASKA--Continued

HOMESTEADS--Continued

A notice of location for homestead settlement on lands applied for as a state selection under the Alaska Statehood Act is unacceptable for recordation.

Conrad S. Huckins, et al., 18 IBLA 357 (Jan. 22, 1975)

Stanley Ray Hunt, 19 IBLA 259 (Mar. 31, 1975)

An application for a second homestead entry under the Act of Sept. 5, 1914, is properly rejected in the absence of sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

Arthur Lloyd Zellweger, 19 IBLA 118 (Mar. 5, 1975)

The breaking, planting or seeding and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

Where it appears that land has been hand seeded and rolled with a log in a similar manner as used on other homestead entries in the area, and where it is not established that such seeding and rolling is not an unreasonable practice for the type of land and weather conditions involved, the entryman's acts may be found to have been calculated to produce profitable results, notwithstanding his efforts failed to produce a useful crop.

A charge that the entryman failed to cultivate the required acreage in the second entry year is not sustained where the contestant's evidence consists mainly of a general statement by a few persons concluding that the entryman's mode of cultivation was inadequate. In the face of testimony to the contrary by contestee's witnesses which leaves the evidence in equipoise, contestant has not met his burden of convincingly establishing the fact of the entryman's failure to cultivate in the second entry year.

Thomas B. Kimball v. William Henry Selby, 20 IBLA 23 (Apr. 16, 1975)

Where a homestead claimant submits a final proof which shows on its face that he has not cultivated the full area required, and the record reflects that he has not qualified for military credit or reduction in the cultivation requirements, action rejecting final proof and canceling the claim may be suspended to permit the entryman to apply to purchase not more than five acres under the Homesite Act of May 26, 1934, failing which the proof will be finally rejected and the claim canceled.

James R. Murphey, 20 IBLA 129 (May 5, 1975)

ALASKA--Continued

HOMESTEADS--Continued

The land in an additional homestead entry application under the Act of Apr. 28, 1904, as amended, 43 U.S.C. § 213 (1970), must be contiguous to the applicant's original homestead. Neither that Act nor regulations issued thereunder require that tracts of land in such an additional entry application be contiguous to each other. The requirement of 43 CFR 2567.1(c) that land in a homestead entry application in Alaska must be in a contiguous body is maintained by the fact that the land in the additional entry must be contiguous to the original homestead.

John C. Briggs, 22 IBLA 8 (Sept. 4, 1975)
82 I.D. 432

A homestead notice of location filed for lands open to location is acceptable for recordation. Where a homestead settler has marked the corners of his claim by posts prior to a withdrawal subject to valid existing rights, the claim survives the withdrawal if the location notice requirements have been satisfied.

Robert A. Bice, Jr., 22 IBLA 291 (Nov. 3, 1975)

A private contest brought against an Alaskan homestead entry charging that the entryman failed to meet the minimum cultivation requirements for the second entry year must be dismissed when it is disclosed that such information was of record in the Bureau of Land Management office at the time the complaint was filed.

Olan W. Christie v. Larry E. O'Glesbee, 23 IBLA 155 (Dec. 23, 1975)

INDIAN AND NATIVE AFFAIRS

Prior to the conveyance of any land pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 (1970)) (ANCSA) the Secretary must make a determination of which public easements are necessary and the Secretary must reserve those easements in the conveyance.

The Secretary has authority to reserve public easements in conveyances under ANCSA (43 U.S.C. § 1601 (1970)) other than those easements identified and recommended by the Joint Federal State Land Use Planning Commission.

The authority of the Secretary to reserve easements in conveyances under ANCSA is not limited to those public easements specifically listed in sec. 17(b) (1) of that Act.

The Secretary is not limited to reservation of easements in conveyances under ANCSA which cross the patented lands from one boundary to another. The easements may be for uses within the patented lands.

Easement Reservations in Conveyances to Alaska Native Corporations Under ANCSA, M-36880 (July 8, 1975) 82 I.D. 325

ALASKA--Continued

INDIAN AND NATIVE AFFAIRS--Continued

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

LAND GRANTS AND SELECTIONS

Generally

A selection application by the State of Alaska must be rejected where all of the applied for land is withdrawn from State selection.

State of Alaska, 18 IBLA 351 (Jan. 15, 1975)

A notice of location for homestead settlement on lands applied for as a state selection under the Alaska Statehood Act is unacceptable for recordation.

Conrad S. Huckins, et al., 18 IBLA 357 (Jan. 22, 1975)

Lands withdrawn by sec. 11(a)(1) & (2) of the Alaska Native Claims Settlement Act are subject to selection by qualified native villages notwithstanding the prior tentative approval of selections of those lands by the State of Alaska pursuant to the Statehood Act.

Where the State of Alaska had received tentative approval of a land selection and had granted a patent to a third party in accordance with § 6(g) of the Alaska Statehood Act, and where the state patent was granted before the enactment of the Alaska Native Claims Settlement Act, with the express approval of the various native groups then concerned, a native village may not later select those lands pursuant to the Alaska Native Claims Settlement Act, as a valid third party right to the land had already been created.

Where statute and regulation provide that lands selected by the State of Alaska must be surveyed before patent can issue, but no similar requirement has been imposed as a precondition to the conveyance of lands selected pursuant to the Alaska Native Claims Settlement Act, the State's contention that this disparity is discriminatory will not afford a basis for reversing a decision which rejected a state selection application in favor of a conflicting native village selection.

The fact that filing fees are required as a condition precedent for state selections and are not required for native village selections pursuant to the Alaska Native Claims Settlement Act is not a basis for vacating a decision awarding lands to the native villages.

State of Alaska, 19 IBLA 178 (Mar. 18, 1975)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

The filing of a State selection under the Alaska Statehood Act does not create a right that prevents a Native village from selecting those lands under the terms of the Alaska Native Claims Settlement Act.

State of Alaska, 19 IBLA 242 (Mar. 27, 1975)

Under 43 CFR 2091.6-4 and 2562.1(d) a notice of location for a trade and manufacturing site is unacceptable for recordation where the land is not subject to that form of disposition because it has been segregated by state selection applications.

Lloyd Schade, 19 IBLA 251 (Mar. 31, 1975)

The filing of a State selection application under sec. 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a Native Village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973).

Whether Village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973), constitute an unwarranted vitiation of the State selection provisions of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

Oil and gas lease applications, action on which was suspended under Public Land Order 4582, 34 FR 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection applications even though the latter postdate the oil and gas lease applications; the first qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

Haruyuki Yamane, et al., 19 IBLA 320 (Apr. 7, 1975)

Under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), the first qualified applicant has a preference right to receive an oil and gas lease where the Department of the Interior has in the exercise of its discretion, determined to issue such a lease. But a lease offer does not create a vested interest where there has been no determination to lease the lands embraced in the lease offer. In the latter instance, the application for

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

a lease is a hope or expectation rather than a valid claim against the Government, and the lease offeror has acquired no rights which are violated by issuance of a patent to the State of Alaska for the lands embraced in the lease offer.

Published notice of a proposed state selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

Published notice of a proposed State selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

The Department of the Interior has neither jurisdiction over nor authority to issue oil and gas leases for lands patented to the State of Alaska.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease. The only right created thereby is the right to an appropriate priority of consideration if, at the discretion of the Department, an oil and gas lease is to be issued for the land which is the subject of the offer, but it will not preclude the filing of a subsequent state selection application, nor bar approval of the state's application and the issuance of a patent to the state.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

A selection filed by the State of Alaska under its Statehood Act segregates the land from all appropriations based on settlement and location when the application is accepted by BLM and posted to the appropriate land status records. A Native allotment application is properly rejected where applicant fails to show occupation and use prior to the filing of an acceptable State selection application.

Martha Isaac, 22 IBLA 224 (Oct. 15, 1975)

A headquarters site claim is invalid when occupancy of the site was initiated more than 90 days prior to the filing of a notice of location and an intervening state selection application has segregated the land.

William G. Fairbanks, 22 IBLA 255 (Oct. 23, 1975)

A Native allotment application is properly rejected where applicant fails to show occupation and use prior to the filing of a State selection application.

Louise Luke, 22 IBLA 388 (Nov. 24, 1975)

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

A selection application, filed by the State of Alaska under its Statehood Act, segregates the land from all appropriations, including those based on settlement and location, when the application is filed. A Native allotment application is properly rejected where it fails to show use and occupancy initiated prior to the filing of the State selection application.

William M. Tennyson, Jr., 23 IBLA 77 (Dec. 12, 1975)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Applications

A notice of location for homestead settlement on lands applied for as a state selection under the Alaska Statehood Act is unacceptable for recordation.

Stanley Ray Hunt, 19 IBLA 259 (Mar. 31, 1975)

An oil and gas lease offer must be rejected when approval is given to a subsequently filed state selection embracing the same lands, including the mineral rights. Following issuance of patent to the State, the Department loses jurisdiction over the patented land.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

State of Alaska, 22 IBLA 229 (Oct. 16, 1975)

Mineral Lands

Sec. 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that federal patents to the State include a proviso to the above effect, rather, it is subsequent State conveyances which must contain a reservation for minerals.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Validity

Sec. 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

Sec. 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that federal patents to the State include a proviso to the above effect, rather, it is subsequent State conveyances which must contain a reservation for minerals.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59
(Apr. 24, 1975) 82 I.D. 174

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59
(Dec. 11, 1975)

NATIVE ALLOTMENTS

An application for an Alaska Native allotment must be rejected where the applicant failed to initiate use and occupancy prior to Dec. 18, 1971.

Schwalbe Nukwak, 18 IBLA 418 (Feb. 10, 1975)

Where an Alaska Native Allotment application pending in the Department on Dec. 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected. However, a correction of a description, where the site was not properly identified on protraction diagrams, may be permitted.

A decision of the Bureau of Land Management rejecting a native allotment application because the land is within an oil shale withdrawal will be set aside and remanded for further consideration where the Secretary of the Interior has directed the Geological Survey to review its mineral classifications in Alaska and the applicant requests an opportunity to present evidence to dispute the classification.

Raymond Paneak, 19 IBLA 68 (Feb. 25, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

A grazing lease issued in 1933 for reindeer under the Act of Mar. 4, 1927, became subject to the Reindeer Act of Sept. 1, 1937, and rules and regulations thereunder. Interpretations of the effect of grazing rights granted under the 1937 Act upon a native allotment applicant's claim of occupancy may be applied to such a lease, if they are not to the detriment of the lessee.

A regulation pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows settlement rights to be initiated while a permit issued under that Act is in existence. The policy manifest in that regulation may be followed, in the exercise of the Secretary's discretion, to permit consideration of a native allotment applicant's occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927, and the regulation was promulgated after initiation of the occupancy.

Kristeen J. Burke, Joe N. Melovedoff,
Victor Melovedoff, 20 IBLA 162 (May 5,
1975)

Lands withdrawn from appropriation under the nonmineral public land laws and lands within Alaska state selection applications are not open to the initiation of Alaska Native allotment claims.

An allotment right is personal to one who has fully complied with the law and regulations. A Native who applies for withdrawn lands must show that he did comply with the law prior to the effective date of withdrawal, and he may not tack on his deceased parents' use and occupancy to establish a right for himself prior to the withdrawal.

The Alaska Native Claims Settlement Act of Dec. 18, 1971, extinguished all aboriginal claims and rights of the natives and terminated whatever aboriginal rights, if any, the natives may have had.

Ann McNoise, David Lee Opheim, Martha Anderson,
20 IBLA 169 (May 7, 1975)

Lands in Naval Petroleum Reserve No. 4 are not available for Alaska Native allotments.

Artie Kittick, Lena Mae Matoomealook,
20 IBLA 241 (May 15, 1975)

Ruth Agnasagga, Andrew Ukak, 21 IBLA 228 (July 31,
1975)

Paul Ogroogak, 22 IBLA 90 (Sept. 22, 1975)

Withdrawn lands and lands closed to nonmineral entry are not open to appropriation under the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970). No rights may be initiated under the Alaska Native Allotment Act by occupation and use of lands not open to appropriation.

Anna Opheim, Chris Roy Opheim, Philip Katelnikoff,
20 IBLA 290 (May 27, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

When a Native has initiated use and occupancy of land prior to the date of its classification under the Classification and Multiple Use Act of 1964, such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, even though the classification remains in effect.

Katie Wassillie, et al., 20 IBLA 330 (June 6, 1975)

Although a patent issued pursuant to an Alaska State selection may have been issued by mistake, it vested title in the State and removed from the jurisdiction of this Department the right to inquire into and consider all disputed questions of fact as well as rights in the land.

Thomas Albert, 20 IBLA 338 (June 11, 1975)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

A native who has applied for an allotment within a national forest must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest.

No property rights were created under the Alaska Native Allotment Act until all requirements of statute and regulation were satisfied during the lifetime of the applicant.

The Government may withdraw lands occupied by Alaskan natives under alleged aboriginal possessory rights and thus preclude such lands from disposition under the Native Allotment Act.

Louis P. Simpson, et al., 20 IBLA 387 (June 16, 1975)

Even if a patent issued to a homestead entryman by mistake or inadvertence, it vested title in the patentee and removed from the jurisdiction of this Department the right to decide all disputed questions of fact as well as rights to land.

Basille Jackson, 21 IBLA 54 (June 18, 1975)

An allotment may issue where a qualified native shows at least five years' continued use and occupancy of land from which he earns subsistence and where his use potentially excludes that of all others.

Jack Koutchak, 21 IBLA 71 (June 25, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An Alaska Native Allotment application covering lands which have been withdrawn from all forms of appropriation must be rejected unless the applicant can demonstrate that he actually used and occupied the land for a period of five years prior to withdrawal.

Henry R. Nashookpuk, Lennie Lane, Jr., Harriet J. Lane, 21 IBLA 116 (June 30, 1975)

The policy manifest in regulations pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows, in the exercise of the Secretary's discretion, consideration of a Native allotment applicant's use and occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927.

Carl E. Malutin, et al., 21 IBLA 152 (July 16, 1975)

An application for a Native allotment consisting of two separate parcels of land is properly rejected as to the one parcel on which there is no evidence of use or occupancy by the applicant and the applicant fails to supply such evidence on request.

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact and there is no chance of development of further material facts which would require a different decision.

Beulah Moses, 21 IBLA 157 (July 21, 1975)

Substantial use and occupancy, as contemplated by the Native Allotment Act, must be by the native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents.

The Native Allotment Act, as amended, requires that an applicant must occupy the land he claims for at least five years, without distinction as to whether or not the land is part of the national forest system or is part of the unreserved public domain. Even if that requirement of the Act were interpreted to apply only to national forest land, occupancy for five years is still required on unreserved public domain by regulations promulgated pursuant to the authority and discretion of the Secretary of the Interior.

The requirement of five years' use and occupancy to receive an allotment under the Native Allotment Act must have occurred prior to Dec. 18, 1971, as the Alaska Native Claims Settlement Act extinguished all such unperfected claims from that day forward.

Warner Bergman, 21 IBLA 173 (July 25, 1975)

More than a quarter of a century of nonuse of land by an applicant for a Native allotment negates any assertion of substantially continuous use and occupancy and militates against a finding of substantial actual possession potentially exclusive of others, as required by law and regulation. Such a long period of nonuse by applicant vitiates any effective qualifying use and occupancy which may have preceded the long period of lack of use.

Lands in a powersite withdrawal are not available for Native allotment unless the applicant has completed five years of qualifying use and occupancy prior to the filing of the application for withdrawal for powersite purposes.

William Carlo, Sr., 21 IBLA 181 (July 25, 1975)

Where an applicant for a Native allotment asserts use and occupancy of the land in 1959 and the land is included in an application for powersite withdrawal of the lands in 1963, and is withdrawn in 1965 for such purposes, the applicant has failed to demonstrate the five years' use and occupancy prior to the effective date of the withdrawal as required by the Secretarial directive of Oct. 18, 1973. This is based upon the finding that an application for power purposes, upon its filing, immediately withdraws the land pursuant to sec. 24 of the Federal Power Act, as amended, 16 U.S.C. § 818 (1970).

Herman Joseph, 21 IBLA 199 (July 30, 1975)

An allotment may not be granted unless the applicant demonstrates she has made a substantially continuous use and occupancy for a period of five years as an independent citizen for herself or as the head of a household and not as a minor child occupying and using land in company with her parents, grandparents or other forebears.

An allotment right is personal to one who has fully complied with the law and regulations. An applicant must show that she herself has complied with the law and she may not tack on the period of use and occupancy by her parents, grandparents, or other forebears nor may general occupancy under alleged aboriginal rights serve as a basis upon which a Native may predicate a claim to an allotment.

Lula J. Young, 21 IBLA 207 (July 30, 1975)

Alaska Native allotment applications for lands in the Tongass National Forest are properly rejected where (1) the applications are not founded on use and occupancy of the applicants prior to inclusion of lands within the forest or (2) the Department of Agriculture does not certify that the lands are chiefly valuable for agricultural or grazing purposes.

Mary Y. Paul, et al., 21 IBLA 223 (July 31, 1975)

The requirement of use and occupancy by an applicant under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of all others and not mere intermittent use. Seasonal use for fishing, hunting and trapping within an area used for similar purposes by others without the consent of the applicant does not satisfy the requirements of the regulation that use shall be potentially to the exclusion of all others.

Where a Native allotment applicant has used the land applied for only for hunting, trapping and fishing and there are no improvements on the land, it is proper in the exercise of the Secretary's discretionary authority to reject the application to the extent it conflicts with a special land use permit issued to the Alaska Fish and Game Department for scientific purposes.

Gregory Anelon, Sr., 21 IBLA 230 (Aug. 1, 1975)

An Alaska Native allotment application is properly rejected where applicant fails to show five years substantial continuous use and occupancy prior to the closing of the land to native allotments. An allotment application is properly rejected when the land applied for is within a powersite withdrawal and initiation of use and occupancy was less than five years prior to the time the lands were closed.

Heirs of Charles E. Frank, et al., 21 IBLA 248 (Aug. 11, 1975)

When a Native has initiated use and occupancy of land prior to the date of its classification under the Classification and Multiple Use Act of 1964, such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, all else being regular, even though the classification remains in effect.

Donald F. Nielsen, Ethel Adcox, 21 IBLA 258 (Aug. 11, 1975)

An allotment application must be rejected where the native did not complete five years substantial use and occupancy of the land prior to withdrawal. An applicant who was an infant of tender years at the time of withdrawal cannot qualify for an allotment on the withdrawn land.

Emma Moses, 21 IBLA 264 (Aug. 11, 1975)

An applicant under the Alaska Native Allotment Act does not have a due process "right" under the Constitution to a hearing before an Administrative Law Judge on the rejection of her application in whole or in part.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The requirement of "substantially continuous use and occupancy of the land for a period of five years" applies to all applicants under the Alaska Native Allotment Act, regardless of where the land is situated. Such five-year period must be completed prior to the time the land was withdrawn by the Alaska Native Claims Settlement Act.

Where a Native allotment applicant has had an adequate opportunity to submit her own evidence of use and occupancy, but has failed to do so, a decision rejecting the application in part because of inadequate use and occupancy may be upheld.

Heldina Eluska, 21 IBLA 292 (Aug. 11, 1975)

The date of the segregation from settlement, caused by the filing of a State selection application in the appropriate office of the Bureau of Land Management, is not tantamount to the "effective date" of "[a] withdrawal or reservation" described in the Secretarial directive of Oct. 18, 1973. Therefore, Native use and occupancy commenced before such segregation may continue, unhampered by such segregation, to gain the requisite five years' use and occupancy required under 43 U.S.C. §§ 270-1 to 270-3 (1970).

Victor A. Anahonak, 21 IBLA 347 (Aug. 18, 1975)

Lands in the Arctic National Wildlife Range may not be made available for Native allotment unless the allotment applicant initiated substantial use and occupancy more than 5 years prior to the withdrawal of the land.

Hernan S. Rexford, Wilson Soplu, 22 IBLA 20 (Sept. 9, 1975)

Lands in the Arctic National Wildlife Range may not be made available for Native allotment unless the allotment applicant initiated substantial use and occupancy more than five years prior to the withdrawal of the land.

Where an Alaska Native Allotment applicant pending in the Department on Dec. 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected.

Annie Soplu, 22 IBLA 38 (Sept. 10, 1975)

An allotment may be granted only when the Native applicant demonstrates actual substantial use and occupation of the land at least potentially exclusive of others, and not merely intermittent use. Where such use is shown, all else being regular, an allotment ordinarily may issue for the smallest legal 40-acre subdivision embracing the area of use.

Hilma Eakon, 22 IBLA 41 (Sept. 15, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An application for an Alaska Native allotment filed with the Department of the Interior after Dec. 18, 1971, must be rejected.

Jessie Jim, Georgia Jim, 22 IBLA 54 (Sept. 17, 1975)

The requirement of "substantially continuous use and occupancy of the land for a period of five years" applies to all applicants under the Alaska Native Allotment Act, regardless of where the land is situated.

The requirement of use and occupancy for a period of five years in order to receive an allotment under the Alaska Native Allotment Act must be completed by Dec. 18, 1971. If an applicant for a Native allotment has not completed the 5 years prior to that date, he does not qualify under the Alaska Native Allotment Act.

John A. Paine, 22 IBLA 56 (Sept. 17, 1975)

Withdrawn lands are not open to appropriation under the Native Allotment Act. An Alaska Native Allotment application is properly rejected where the applicant fails to show substantial use and occupancy at least potentially to the exclusion of others and not mere intermittent use.

Serafina Anelon, 22 IBLA 104 (Sept. 22, 1975)

Lands required for airport approach and aviation purposes, and lands most used in common by the general community, will be retained in public ownership and will not be conveyed pursuant to an application filed under the Alaska Native Allotment Act. Where the record fails to show that a Native has used land at least potentially to the exclusion of others for a 5-year period, his application for Native allotment is properly rejected.

Evan Chiskak, Alex Hunt, Angela Odinzoff, Antonia Raymond, 22 IBLA 153 (Sept. 30, 1975)

Lands withdrawn from appropriation under the non-mineral public land laws are not open to the initiation of Alaska Native Allotment claims. No rights may be initiated under the Alaska Native Allotment Act by occupation and use of lands not open to appropriation.

Substantial use and occupancy, as contemplated by the Alaska Native Allotment Act, must be by the native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents.

An allotment right is personal to one who has fully complied with the law and regulations. A native who applies for withdrawn lands must show that he did comply with the law prior to the effective date of withdrawal, and he may not tack on his deceased parents' use and occupancy to establish a right for himself prior to the withdrawal.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The Alaska Native Claims Settlement Act of Dec. 18, 1971, extinguished all aboriginal claims and rights of the natives and terminated whatever aboriginal rights, if any, the natives may have had.

James S. Picnalook, Sr., Mabel Bullard, 22 IBLA 191 (Oct. 15, 1975)

The Secretarial instruction of Oct. 18, 1973, which mandates a showing by a Native allotment applicant of 5 years of occupancy prior to a withdrawal of the land, was not required to be published as rulemaking since 5 U.S.C. § 553(a)(2) (1970) exempts from its ambit matters pertaining to public property.

Where a Native allotment application is not allowable because of failure to meet requirements of law and the applicant dies, her heirs gain no rights to the land.

Heirs of Dorothy Gordon, 22 IBLA 213 (Oct. 15, 1975)

A selection filed by the State of Alaska under its Statehood Act segregates the land from all appropriations based on settlement and location when the application is accepted by BLM and posted to the appropriate land status records. A Native allotment application is properly rejected where applicant fails to show occupation and use prior to the filing of an acceptable State selection application.

Martha Isaac, 22 IBLA 224 (Oct. 15, 1975)

The requirement of "substantially continuous use and occupancy of the land for a period of five years" applies to all applicants under the Alaska Native Allotment Act, regardless of where the land is situated.

A Native allotment applicant is not entitled to credit for her use and occupancy of the land as a minor child accompanying her parents. Moreover, failure to use the land for at least 8 years prior to applying for a Native allotment precludes an applicant from showing "substantially continuous use and occupancy of the land."

Applicants under the Alaska Native Allotment Act do not have a right to a formal hearing before an Administrative Law Judge. However, a hearing may be ordered in the discretion of the Secretary of the Interior.

Elsie Bergman, Walter Titus, Steven Bergman, 22 IBLA 233 (Oct. 22, 1975)

The Alaska Native Allotment Act, as amended and supplemented, requires that an applicant must use and occupy the land claimed for at least five years, whether or not the land is part of the national forest system or is part of the unreserved public domain. Even if the Act were to be construed as not expressly requiring five-year use and occupancy prior to issuance of an allotment for unreserved public domain lands, Departmental regulations promulgated pursuant to the authority and discretion of the Secretary of the Interior impose such a requirement.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The preference right created under the Alaska Native Allotment Act is not a property right protected by the Fifth or Fourteenth Amendments to the United States Constitution, and consequently, a Native allotment applicant has no constitutional right to a hearing. While the applicant is not entitled to a hearing as a matter of right, one may be held at the discretion of the Secretary of the Interior, but when the applicant fails to allege any facts which would justify a hearing and the sole issues presented are legal in nature, an evidentiary hearing is not required.

Substantial use and occupancy, as contemplated by the Alaska Native Allotment Act, must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents.

Paul Koyukuk, 22 IBLA 247 (Oct. 22, 1975)

An Alaska Native allotment application is properly rejected where applicant fails to show 5 years' substantially continuous use and occupancy prior to the closing of the land to Native allotments. An allotment application is properly rejected when the land applied for is within a powersite withdrawal and initiation of use and occupancy was less than 5 years prior to the time the lands were closed.

Leah Druck, 22 IBLA 253 (Oct. 22, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

Once made, an election to apply under sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), in lieu of a Native allotment application, is irrevocable.

Dwight Tevuk, Deceased, 22 IBLA 296 (Nov. 3, 1975)

Mere seasonal use of land for berry picking, when the land is used for berry picking by others, is not the substantially continuous use and occupancy to the potential exclusion of others contemplated by the regulations. A Native allotment application which asserts seasonal use for berry picking while the land is used by others must be rejected.

Myrtle Joycox, 22 IBLA 324 (Nov. 10, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where, prior to the rejection of her application, an applicant for a Native allotment was advised of findings which, unless rebutted, would result in the rejection of the application, and was afforded an extended period of time in which to submit additional evidence, evidence which is thereafter submitted for the first time on appeal from the rejection decision, without explanation of why it was not submitted when due, will not be favorably considered in adjudicating the propriety of the decision appealed from.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Mary Ayojiak, 22 IBLA 384 (Nov. 21, 1975)

A Native allotment application is properly rejected where applicant fails to show occupation and use prior to the filing of a State selection application.

Substantial use and occupancy, as contemplated by the Alaska Native Allotment Act, must be by the Native as an independent citizen for herself or as head of a family, and not as a minor child occupying or using the land in company with her parents.

Louise Luke, 22 IBLA 388 (Nov. 24, 1975)

The requirement of use and occupancy by an applicant under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of all others and not mere intermittent use. The burden to present clear and credible evidence to establish entitlement is upon the applicant.

The requirement of "substantially continuous use and occupancy of the land for a period of 5 years" applies to all allotments under the Alaska Native Allotment Act, regardless of where the land is situated.

An applicant under the Alaska Native Allotment Act does not have a due process right under the Constitution to a hearing before an Administrative Law Judge on the rejection of his application.

Jack Gosuk, 22 IBLA 392 (Nov. 24, 1975)

Lands withdrawn from appropriation under the public land laws and lands within Alaska State selection applications are not open to the initiation of Alaska Native allotment claims.

An applicant for a Native allotment cannot tack on the use and occupancy of the land by his relatives to his own use and occupancy in order to establish the statutory 5-year period of substantially continuous use and occupancy.

Cecil R. Sholl, 23 IBLA 17 (Nov. 26, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

A Native who has applied for an allotment within a national forest must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest.

Under the Alaska Native Allotment Act, a Native must be old enough to exert independent use and control of the land at the time he initiates his claim, and must occupy the land to the potential exclusion of others.

Christina Laverne Hanlon, et al., 23 IBLA 36 (Dec. 2, 1975)

Substantial use and occupancy, as contemplated by the Native Allotment Act, must be by the Native independently for himself or as head of a family prior to the effective date of withdrawal, and he may not tack on use and occupancy by his parents or ancestors to establish a right for himself prior to the withdrawal.

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

A selection application, filed by the State of Alaska under its Statehood Act, segregates the land from all appropriations, including those based on settlement and location, when the application is filed. A Native allotment application is properly rejected where it fails to show use and occupancy initiated prior to the filing of the State selection application.

William M. Tennyson, Jr., 23 IBLA 77 (Dec. 12, 1975)

The use and occupancy requirement is satisfied when a qualified Native shows at least 5 years of continued use and occupancy of land from which she earns subsistence and where her use potentially excludes that of all others.

Bernice A. Brown, 23 IBLA 79 (Dec. 12, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

An applicant for a Native allotment has no right to a hearing, and none is required where there is no offer of proof which indicates that the findings of the State Office were incorrect, or where an offer of evidence is unaccompanied by a satisfactory explanation why it was not submitted to the State Office within the time provided.

A request by a Native allotment applicant for a new field examination will be denied where the applicant was given the opportunity to submit evidence in support of her claim and failed to do so.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

Where a field examination reveals substantial use and occupancy by persons other than the claimant, a decision rejecting a Native allotment application will be affirmed.

Nora E. Konukpeok, 23 IBLA 86 (Dec. 16, 1975)

An Alaska Native allotment application is properly rejected where the applicant fails to demonstrate completion of 5 years of substantially continuous use and occupancy prior to an application for withdrawal of the land for power purposes.

Wayne C. Williams, 23 IBLA 88 (Dec. 16, 1975)

The right to an allotment is personal to a Native who has complied with the law and regulations. An applicant who applies for withdrawn lands must show personal compliance with the law prior to the effect of the withdrawal. Such applicant may not tack on the use and occupancy of parents or other relatives to establish her right prior to the withdrawal.

An allotment application must be rejected where the applicant was an infant of tender years at the time the subject land was withdrawn, and where it is obvious that because of her age she could not have exerted independent use and occupancy of the land to the exclusion of others.

Catherine Angaiak, 23 IBLA 91 (Dec. 18, 1975)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where a Native allotment applicant alleges that he has used the applied for land for hunting and trapping and submits several affidavits for the first time on appeal which verify this use, and the applicant makes a satisfactory showing explaining why he was unable to submit this evidence to the Bureau of Land Management prior to its decision, the case will be remanded to the Bureau for further consideration of the application in light of the new evidence.

Jack Egnaty, Sr., 23 IBLA 95 (Dec. 18, 1975)

Where a Native allotment applicant has had an adequate opportunity to submit credible evidence of substantially continuous use and occupancy of the land at least potentially exclusive of others, but has failed to make such a showing, the application is properly rejected.

A 20-year period of nonuse of land by an applicant for a Native allotment negates any assertion of substantially continuous use and occupancy and militates against a finding of substantial actual possession potentially exclusive of others, as required by law and regulation. The period of nonuse vitiates any effective qualifying use and occupancy which may have preceded the long period of lack of use.

Natalia Kepuk, 23 IBLA 99 (Dec. 18, 1975)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or, (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

A Native who has applied for an allotment within a national forest must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest.

Estate of Benjamin A. Wright, 23 IBLA 120 (Dec. 23, 1975)

A decision rejecting a Native allotment application which alleges occupancy only as of a date after a State selection application for the land has been filed will be upheld and a request for a hearing on appeal denied where appellant has refused after repeated opportunities to provide factual allegations of qualifying occupancy and the statement of reasons on appeal fails to assert any facts which would tend to establish qualifying occupancy.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

A Native allotment applicant is charged with notice of the official land records of the Bureau of Land Management. No estoppel will result from a delay in the rejection of a Native allotment where the basis of the decision is that the land was segregated by a State selection application prior to commencement of occupancy, the delay was not unreasonable, the State selection was a matter of public record, and no misrepresentations were made to the applicant.

Roselyn Isaac, 23 IBLA 124 (Dec. 23, 1975)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

A Native who has applied for an allotment within a national forest must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the forest withdrawal and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the forest.

Nadja Davis Gamble, 23 IBLA 128 (Dec. 23, 1975)

The burden is upon an applicant for an Alaska Native allotment to provide clear and credible evidence of his or her entitlement to an allotment. Failure to do so will result in rejection of the application.

When an applicant for an Alaska Native allotment dies without having complied with the law and regulations necessary to earn an allotment, no property right is created which could have passed to the heirs of the applicant upon her death.

Heirs of Madrona Wassillie, 23 IBLA 131 (Dec. 23, 1975)

Under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

Edward F. Naughton, 23 IBLA 134 (Dec. 23, 1975)

Where a Native allotment applicant has had an adequate opportunity to submit credible evidence of substantially continuous use and occupancy of the land at least potentially exclusive of others, but has failed to make such a showing, the application is properly rejected.

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Over 20 years of nonuse of land by an applicant for a Native allotment negates any assertion of substantially continuous use and occupancy and militates against a finding of substantial actual possession potentially exclusive of others, as required by law and regulation. The period of nonuse vitiates any effective qualifying use and occupancy which may have preceded the long period of lack of use.

Lucy Hyoxikok, 23 IBLA 145 (Dec. 23, 1975)

An allotment may be granted only when the Native applicant demonstrates actual substantial use and occupancy of the land at least potentially exclusive of others and not merely intermittent use.

Where a Native allotment applicant has had an adequate opportunity to clearly identify his area of allotment and to present clear and credible evidence to establish his entitlement but has failed to do so, a decision rejecting the application will be affirmed.

Pavilla Pauk, 23 IBLA 151 (Dec. 23, 1975)

A Native allotment may not be approved where the land applied for has been within a power site withdrawal long prior to the initiation of applicant's use and occupancy.

Davis Hobson, 23 IBLA 159 (Dec. 23, 1975)

There must be "substantially continuous use and occupancy of the land" by an Alaska Native allotment applicant to qualify such an applicant for an allotment.

Heirs of Macauley Alakayak, 23 IBLA 170 (Dec. 29, 1975)

The substantial use and occupancy required under the Native Allotment Act must be achieved by the Native himself as an independent citizen (or family head) and such use must be at least potentially exclusive of others. Although a minor may initiate such use and occupancy, use and occupancy by a dependent accompanied by his parents does not qualify.

An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment may not tack on use and occupancy of the land by his ancestors to establish the right. The applicant must have completed the 5-year period of use and occupancy prior to withdrawal of the land to qualify.

Where the decision appealed from is based essentially on the facts disclosed by appellant, there is no dispute as to any material fact, and the sole question presented is a legal issue, no evidentiary hearing is required on appeal.

Sarah F. Lindgren, Emery V. Showalter, 23 IBLA 174 (Dec. 31, 1975)

ALASKA--Continued

OIL AND GAS LEASES

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

POSSESSORY RIGHTS

Settlement on a homestead claim in Alaska two days prior to a withdrawal of the land does not except the land from the withdrawal where the claimant failed to file his notice of location within 90 days after settlement as required by the Act of Apr. 29, 1950, 64 Stat. 94, 43 U.S.C. §§ 270, 270-5, 270-6 (1970), and his notice is properly held to be unacceptable for recordation.

Gary Lee Slay, 18 IBLA 345 (Jan. 14, 1975)

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of Apr. 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

There can be no "valid existing right" in a claimant of a headquarters site on land withdrawn by Public Land Order No. 4582 unless a notice of location or application to purchase had been filed in accordance with the Act of Apr. 29, 1950. The filing of an application for a survey of omitted land did not by itself create any preference rights to the land.

ALASKA--Continued

POSSESSORY RIGHTS--Continued

Notices of location for headquarters sites must be accepted for filing by the authorized Bureau of Land Management office if the land has been subject to location during the preceding 90 days. The fact that land had been omitted from the original survey is not a valid reason for the Bureau of Land Management to refuse to record a properly filed notice of location for a headquarters site.

An application to purchase a headquarters site is subject to rejection if it is filed after the 5-year period from the filing of a notice of location of the claim, or, if no notice had been filed, it was filed more than 90 days after the land has been withdrawn.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

Donald J. Thomas, 22 IBLA 210 (Oct. 15, 1975)

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

A notice of location for a homesite which alleges only acts of occupancy and improvement insufficient to create any interest in the land is properly denied recordation.

Edward P. Dooley, 22 IBLA 338 (Nov. 14, 1975)

STATEHOOD ACT

Sec. 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

ALASKA--Continued

STATEHOOD ACT--Continued

Sec. 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that federal patents to the State include a proviso to the above effect, rather, it is subsequent State conveyances which must contain a reservation for minerals.

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59
(Apr. 24, 1975) 82 I.D. 174

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Berman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

ALASKA--Continued

TRADE AND MANUFACTURING SITES

Under 43 CFR 2091.6-4 and 2562.1(d) a notice of location for a trade and manufacturing site is unacceptable for recordation where the land is not subject to that form of disposition because it has been segregated by state selection applications.

Lloyd Schade, 19 IBLA 251 (Mar. 31, 1975)

One who has qualified for a patent to a trade and manufacturing site may legally take a partner into the business or contract for the sale of the business, and so long as he retains legal title and the sales contract remains executory on the part of the purchaser he is not thereby disqualified from receiving a patent.

Where the claimant of a trade and manufacturing site who has substantially complied with the requirements of law and regulation makes a legitimate contract for the conditional sale of the business to another before filing his application for patent, equitable adjudication will be invoked to prevent an intervening land classification action from operating to destroy the interest of both the claimant and his buyer and defeating the purpose of the Act.

Paul M. Jovick, 19 IBLA 283 (Apr. 7, 1975)

An applicant for a trade and manufacturing site who has sold his entire interest in the claim prior to submitting his purchase application is no longer a qualified applicant under the trade and manufacturing site law. Any rights he may have earlier established terminated at the time he conveyed his interest in the claim.

A transferee of an original locator's possessory interest in a trade and manufacturing site cannot qualify for the site under his transferor's notice to avoid the effect of a withdrawal where the transferee had not filed his own notice or purchase application prior to the withdrawal.

Rights to public land can only be gained by compliance with governing public land laws. Trade and manufacturing site occupancy initiated and continued under a defective notice of location filed in the name of one individual, but alleged to have been filed on behalf of an association of persons, cannot lead to qualification by the association to purchase the site.

Frederick E. Heinz, 20 IBLA 174 (May 7, 1975)

Under the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), a notice of location of a trade and manufacturing site filed after withdrawal of the land is acceptable if it is filed within 90 days of settlement and the settlement occurs prior to a withdrawal of the land. An application to purchase based on such an asserted settlement and

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

filing will be rejected when it is not filed within the statutory life of the asserted claim, but the applicant may be afforded an opportunity to submit a justification for his late filing under the principles of equitable adjudication.

Edwin William Seiler (On Reconsidcration), 20 IBLA 221 (May 9, 1975)

A locator of a trade and manufacturing location initiates no rights against the United States unless he actually uses and occupies the land for trade and manufacturing purposes. A prospective business site is not within the contemplation of the trade and manufacturing site law; improvements of contiguous land in connection with the development of a prospective trade and manufacturing site create no rights in the locator.

Elden L. Reese, 21 IBLA 251 (Aug. 11, 1975)

Where land within a trade and manufacturing site is withdrawn from appropriation prior to its occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, the invalid claim cannot be perfected.

Allan D. Hodge, 22 IBLA 150 (Sept. 30, 1975)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

GENERALLY

Where a Public Land Order withdraws land from all forms of appropriation under the public land laws for proper classification of the lands under Alaska Native Claims Settlement Act and for protection of public interest values, but provides that the withdrawn lands are subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to grant leases, an application for Small Tract lease accompanied by a petition for classification may be accepted for filing by the Bureau of Land Management. Ultimate disposition of the application will be dependent upon the classification of the land involved.

Elizabeth A. Sharp, 19 IBLA 312 (Apr. 7, 1975)

Where approval of an application to purchase sand and gravel pursuant to the Materials Disposal Act of 1947 is opposed by a native village which has already selected the land on which the sand and gravel is located, and to whom conveyance is imminent, the application will be rejected.

Clarence Wren, 20 IBLA 47 (Apr. 21, 1975)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

GENERALLY--Continued

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III, 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

The requirement of five years' use and occupancy to receive an allotment under the Native Allotment Act must have occurred prior to Dec. 18, 1971, as the Alaska Native Claims Settlement Act extinguished all such unperfected claims from that day forward.

Warner Bergman, 21 IBLA 173 (July 25, 1975)

The requirement of use and occupancy for a period of five years in order to receive an allotment under the Alaska Native Allotment Act must be completed by Dec. 18, 1971. If an applicant for a Native allotment has not completed the 5 years prior to that date, he does not qualify under the Alaska Native Allotment Act.

John A. Paine, 22 IBLA 56 (Sept. 17, 1975)

EASEMENTS

Prior to the conveyance of any land pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 (1970)) (ANCSA) the Secretary must make a determination of which public easements are necessary and the Secretary must reserve those easements in the conveyance.

The Secretary has authority to reserve public easements in conveyances under ANCSA (43 U.S.C. § 1601 (1970)) other than those easements identified and recommended by the Joint Federal State Land Use Planning Commission.

The authority of the Secretary to reserve easements in conveyances under ANCSA is not limited to those public easements specifically listed in sec. 17(b) (1) of that Act.

The Secretary is not limited to reservation of easements in conveyances under ANCSA which cross the patented lands from one boundary to another. The easements may be for uses within the patented lands.

Easement Reservations in Conveyances to Alaska Native Corporations Under ANCSA, M-36880 (July 8, 1975) 82 I.D. 325

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

INDIAN RESIDENCE ALLOTMENT

Once made, an election to apply under sec. 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (Supp. III, 1973), in lieu of a Native allotment application, is irrevocable.

Dwight Tevuk, Deceased, 22 IBLA 296 (Nov. 3, 1975)

NATIVE VILLAGE SELECTIONS

Lands withdrawn by sec. 11(a)(1) & (2) of the Alaska Native Claims Settlement Act are subject to selection by qualified native villages notwithstanding the prior tentative approval of selections of those lands by the State of Alaska pursuant to the Statehood Act.

Where the State of Alaska had received tentative approval of a land selection and had granted a patent to a third party in accordance with § 6(g) of the Alaska Statehood Act, and where the state patent was granted before the enactment of the Alaska Native Claims Settlement Act, with the express approval of the various native groups then concerned, a native village may not later select those lands pursuant to the Alaska Native Claims Settlement Act, as a valid third party right to the land had already been created.

Where statute and regulation provide that lands selected by the State of Alaska must be surveyed before patent can issue, but no similar requirement has been imposed as a precondition to the conveyance of lands selected pursuant to the Alaska Native Claims Settlement Act, the State's contention that this disparity is discriminatory will not afford a basis for reversing a decision which rejected a state selection application in favor of a conflicting native village selection.

The fact that filing fees are required as a condition precedent for state selections and are not required for native village selections pursuant to the Alaska Native Claims Settlement Act is not a basis for vacating a decision awarding lands to the native villages.

State of Alaska, 19 IBLA 178 (Mar. 18, 1975)

The filing of a State selection under the Alaska Statehood Act does not create a right that prevents a Native village from selecting those lands under the terms of the Alaska Native Claims Settlement Act.

State of Alaska, 19 IBLA 242 (Mar. 27, 1975)

The filing of a State selection application under sec. 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a Native Village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973).

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NATIVE VILLAGE SELECTIONS--Continued

Whether Village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973), constitute an unwarranted vitiation of the State selection provisions of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

Where approval of an application to purchase sand and gravel pursuant to the Materials Disposal Act of 1947 is opposed by a native village which has already selected the land on which the sand and gravel is located, and to whom conveyance is imminent, the application will be rejected.

Clarence Wren, 20 IBLA 47 (Apr. 21, 1975)

APPEALS

(See also Contracts, Federal Coal Mine Health and Safety Act of 1969, Grazing Permits and Licenses, Indian Probate, Indian Tribes, Rules of Practice, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970)

A decision by a District Manager denying a requested award of grazing privileges must state the reasons therefore, and not simply the conclusion that the applicant is not qualified.

Ervin J. Crowder, 20 IBLA 305 (May 30, 1975)

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed.

Elmer Peterson, 21 IBLA 52 (June 17, 1975)

Where an oil and gas lessee appeals from a decision of an Oil and Gas Supervisor's determination that additional royalties are due to the Government, and simultaneously files a request for suspension of the ruling, which is granted by the Geological Survey "until further notice," prejudgment interest continues to accrue during the period of the suspension. This conclusion is premised on the doctrine that interest is compensation for delay in payment.

Atlantic Richfield Company, 21 IBLA 98 (June 30, 1975) 82 I.D. 316

A Bureau of Land Management Office has no jurisdiction to take further action on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

EALS--Continued

Where high bids, not clearly spurious or irresponsible, tendered at a competitive sale of oil and gas leases, are rejected solely on the statement of a field official that the bids are inadequate, and no basis whatever for that conclusion is reflected in the case record, the decision will be set aside and the case will be remanded for the compilation of a proper record and re-adjudication of the acceptability of the bids.

Arkla Exploration Co., 22 IBLA 92 (Sept. 22, 1975)

A qualified heir or devisee of a deceased applicant for a mineral lease under 43 CFR 3564, or the administrator or executor of his estate, may receive the lease in the applicant's stead, or maintain an appeal from the rejection of such application on the same basis as the heirs or representatives of deceased applicants for other kinds of mineral leases where no third-party interests require consideration.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

Where, prior to the rejection of her application, an applicant for a Native allotment was advised of findings which, unless rebutted, would result in the rejection of the application, and was afforded an extended period of time in which to submit additional evidence, evidence which is thereafter submitted for the first time on appeal from the rejection decision, without explanation of why it was not submitted when due, will not be favorably considered in adjudicating the propriety of the decision appealed from.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Mary Ayojiak, 22 IBLA 384 (Nov. 21, 1975)

An appeal to the Director, Geological Survey, is properly dismissed by him where the appellant failed to comply with the procedure prescribed by the applicable regulations with respect to the form and content of the notice of appeal, the time afforded for the filing of additional reasons, arguments or briefs, and the procedure for obtaining an extension of such time, and no valid reason is given which would warrant excusing such failures as an exercise of administrative discretion.

Robert B. Ferguson, 23 IBLA 29 (Dec. 2, 1975)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

APPEALS--Continued

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

APPLICATIONS AND ENTRIES

GENERALLY

A notice of location for homestead settlement on lands applied for as a state selection under the Alaska Statehood Act is unacceptable for recordation.

Conrad S. Huckins, et al., 18 IBLA 357 (Jan. 22, 1975)

Stanley Ray Hunt, 19 IBLA 259 (Mar. 31, 1975)

An application to make a homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Richard E. Grill, et al., 18 IBLA 428 (Feb. 14, 1975)

Where applications for a right-of-way and a special land-use permit are filed in conformity with the requirements of regulations then in effect, and the regulations are amended while final action on the applications is pending, but the amended regulations are made effective at a future date, then if the right-of-way and permit are issued prior to the effective date of the amendments they will not be subject to the added requirements; but if the applications are still pending when the amendments become effective, the new regulations will govern.

Arizona Public Service Company, 20 IBLA 120 (Apr. 25, 1975)

A selection of land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

The issuance of a special land-use permit is discretionary, and the Bureau of Land Management may reject a special land-use permit application when the proposed use would adversely affect the public interest, and may offer, in the alternative, a permit providing for use consonant with proper management of national resource lands.

Jerry Tecklin, Leonard Brackett, 20 IBLA 308 (May 30, 1975)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Austral Oil Company, Inc., 21 IBLA 243 (Aug. 11, 1975)

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors involved, and no sufficient basis to disturb the decision is shown.

Boulder City Aero Club, Inc., 21 IBLA 343 (Aug. 18, 1975)

Until a final authoritative judicial determination is made of the title to geothermal resources in lands patented with a reservation of all minerals to the United States, a geothermal lease application which omits such patented lands from a section will not be considered in compliance with 43 CFR 3210.2-1(c) requiring all available lands in a section to be described in the lease application. However, the application may be suspended as to that section, rather than rejected, until the title question is resolved.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. The proposed mode for financing the development of land applied for pursuant to the Recreation and Public Purposes Act cannot compel issuance of a patent instead of a lease if issuance of a patent would be contrary to the public interest as determined by the Secretary or his delegate. Thus, in the event the applicant has secured financial resources by promising acquisition of title to the land, the proper action is not for the Bureau of Land Management to change the applicant's tenure status in violation of the public interest, but rather for the applicant to secure alternate financing arrangements.

Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (Oct. 7, 1975)

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

State of Alaska, 22 IBLA 229 (Oct. 16, 1975)

AMENDMENTS

Where an Alaska Native Allotment application pending in the Department on Dec. 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected. However, a correction of a description, where the site was not properly identified on protraction diagrams, may be permitted.

Raymond Paneak, 19 IBLA 68 (Feb. 25, 1975)

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

Edward B. Towne, 21 IBLA 304 (Aug. 14, 1975)

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in such an application received after the close of the monthly filing period in which the initial application was filed will not be allowed.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

APPLICATIONS AND ENTRIES--Continued

AMENDMENTS--Continued

Where an Alaska Native Allotment applicant pending in the Department on Dec. 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected.

Annie Soplu, 22 IBLA 38 (Sept. 10, 1975)

CANCELLATION

The filing of a notice of location for a headquarters site does not prevent a withdrawal from attaching to the land prior to the time the locator of the headquarters site performs the requisite acts with respect to use and occupancy necessary to establish the right to purchase.

A headquarters site claim located prior to a withdrawal may be declared invalid by the Bureau of Land Management without awaiting the filing of a patent application where there has been insufficient compliance with the law to appropriate the land before the withdrawal. However, the bureau should follow appropriate procedures. These should include giving notice to the claimant to show cause why the claim should not be invalidated where the notice of location does not show adequate compliance with the law sufficient to preclude the withdrawal, and initiating a contest and affording an opportunity for a hearing where there are disputed facts on the compliance with the law.

Richard T. Pope, 22 IBLA 374 (Nov. 17, 1975)

FILING

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crapo, Richard L. Crapo, 19 IBLA 208 (Mar. 21, 1975)

Under the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), a notice of location of a trade and manufacturing site filed after withdrawal of the land is acceptable if it is filed within 90 days of settlement and the settlement occurs prior to a withdrawal of the land. An application to purchase based on such an asserted settlement and filing will be rejected when it is not filed within the statutory life of the asserted claim, but the applicant may be afforded an opportunity to submit a justification for his late filing under the principles of equitable adjudication.

Edwin William Seiler (On Reconsideration), 20 IBLA 221 (May 9, 1975)

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

Since the statute authorizing cash payment to the holder of soldiers' additional rights requires that an applicant for such payment must give written notice to the Secretary of the Interior of his election to receive such payment prior to Jan. 1, 1975, an application received on Jan. 2, 1975, must be rejected.

J. Sidney Rood, 20 IBLA 319 (June 4, 1975)

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piece-meal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

It is improper for the Bureau of Land Management to require an applicant having partially conflicting noncompetitive acquired lands oil and gas lease offers filed in the regular over-the-counter procedure at different times to withdraw either his senior or junior offer simply because of the conflict.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

PRIORITY

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crapo, Richard L. Crapo, 19 IBLA 208 (Mar. 21, 1975)

APPLICATIONS AND ENTRIES--Continued

PRIORITY--Continued

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piece-meal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

VALID EXISTING RIGHTS

The mere filing of a notice of location for a headquarters site under 43 U.S.C. § 687a (1970) does not establish rights to land. If a claimant cannot also demonstrate the necessary use and occupancy of the site prior to the effective date of a withdrawal and establish a right of purchase, he does not have a "valid existing right" excepted from the withdrawal, and the withdrawal attaches to the land in the site.

Stephen P. Sorensen, 22 IBLA 258 (Oct. 24, 1975)

A homestead notice of location filed for lands open to location is acceptable for recordation. Where a homestead settler has marked the corners of his claim by posts prior to a withdrawal subject to valid existing rights, the claim survives the withdrawal if the location notice requirements have been satisfied.

Robert A. Bice, Jr., 22 IBLA 291 (Nov. 3, 1975)

VESTED RIGHTS

The filing of an application for a special land use permit does not vest in the applicant any rights which preclude the Bureau of Land Management from requiring compliance with fee assessments adopted after the date of such filing but before issuance of the permit. In the absence of a provision that pending applications are to be exempted from the effects of the change in fee requirements, the applicant must comply with the fee assessment in effect at the time of the issuance of the special land use permit.

APPLICATIONS AND ENTRIES--Continued

VESTED RIGHTS--Continued

An applicant's special land use permit application does not fall within the "firm commitment" exception of a Bureau of Land Management instruction memorandum requiring revised fee assessments for off-road vehicle (ORV) permits where, subsequent to issuance and notice of the memorandum, the application is still in the preliminary processing stage requiring additional pre-event meetings, the applicant's acceptance of special stipulations, and further staff investigation and review before approval; however, the case will be remanded for further consideration where the District Office decision does not determine whether the application falls within the memorandum exception which permits the honoring of "negotiations which have progressed too far to negate * * *."

Walt's Racing Association, 18 IBLA 359 (Jan. 30, 1975)

The rejection of an application for the purchase of land under the Recreation and Public Purposes Act does not violate the tenets of due process since the disposition of the application is at the discretion of the Department, and the applicant has acquired no vested right protected by the United States Constitution.

Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (Oct. 7, 1975)

An applicant's special land use permit application does not fall within a Bureau of Land Management instruction memorandum exception which permits the honoring of past "negotiations which have progressed too far to negate," in lieu of the new revised fee assessment required by the memorandum for off-road vehicle events, where at the time of issuance and notice of the memorandum only preliminary negotiations had occurred which could still be negated.

Walt's Racing Association, 22 IBLA 238 (Oct. 22, 1975)

APPRAISALS

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

Where the current fair market value of land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

APPRAISALS--Continued

Where a decision fixes a small tract rental derived from an appraisal report which does not comport with Departmental standards, the decision will be set aside and the case remanded for a new appraisal to establish the fair rental value.

Junction Oil Company, Inc., 21 IBLA 78 (June 25, 1975)

Where an appraisal has followed established criteria in calculating the fair-market value of rental for a right-of-way, it will be affirmed, absent a showing by positive and substantial evidence that the appraisal is in error.

Western Slope Gas Co., 21 IBLA 119 (July 14, 1975)

AUTHORITY TO BIND GOVERNMENT

The United States is not estopped to assert title to, survey, or deny the swamp and overflowed character of public lands constituting offshore islands in Florida either by Departmental inaction on the State's swampland application, or by inclusion of the islands in a swampland selection list, or by the survey protestants' adverse chain of title and claims of occupancy and use.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

AVULSION

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

BOUNDARIES
(See also Accretion, Avulsion, Surveys of Public Lands)

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

BOUNDARIES--Continued

The survey of an offshore island without the use of 18.6-year mean high tide data, which governs boundary disputes between private upland and tideland owners, is proper; the 18.6-year lunar cycle tide data does not govern meander lines established in public land surveys.

Meander of an offshore island is ordinarily based on a mean high tide determined by the vegetative line upon the soil in accordance with the Bureau of Land Management's Manual of Surveying Instructions.

The Secretary of the Interior is authorized and under a duty to determine what lands are public lands and to survey such lands. Neither the Acts admitting Florida into the Union, nor the Reconstruction Act of March 2, 1867, divested the Secretary of the Interior of that authority regarding islands in the State of Florida, nor divested the United States of title to any public lands in the State.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

BUREAU OF LAND MANAGEMENT
(See also Mineral Leasing Act)

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (Feb. 7, 1975) 82 I.D. 60

Delta Funds, Inc., 19 IBLA 185 (Mar. 18, 1975)

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, the authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

When a Native has initiated use and occupancy of land prior to the date of its classification under the Classification and Multiple Use Act of 1964, such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, even though the classification remains in effect.

Katie Wassillie, et al., 20 IBLA 330 (June 6, 1975)

CLASSIFICATION AND MULTIPLE USE ACT OF 1964--Continued

When a Native has initiated use and occupancy of land prior to the date of its classification under the Classification and Multiple Use Act of 1964, such classification will not constitute a bar to the completion of the statutory five-year use and occupancy period, and the allotment may be granted, all else being regular, even though the classification remains in effect.

Donald F. Nielsen, Ethel Adcox, 21 IBLA 258 (Aug. 11, 1975)

COAL LANDS

In order for an assertion of competitive interest to create a bar to the allowance of an application to modify an existing coal lease by the addition of contiguous land, the competitive interest asserted must be identifiable, substantial and genuine, and not merely speculative or casual.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

COAL LEASES AND PERMITS

GENERALLY

In order for an assertion of competitive interest to create a bar to the allowance of an application to modify an existing coal lease by the addition of contiguous land, the competitive interest asserted must be identifiable, substantial and genuine, and not merely speculative or casual.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

APPLICATIONS

A decision rejecting a coal prospecting permit application will be affirmed where the decision was made pursuant to and in accordance with Secretarial Order 2952 of Feb. 13, 1973.

Utah Resources International, Inc., 18 IBLA 320 (Jan. 6, 1975)

Where a company requesting the Bureau of Land Management to offer coal lands for lease by competitive bidding fails to furnish the information requested by BLM so that it is impossible to determine if the Department's criteria for issuance of coal leases has been satisfied, the request for competitive lease offering will be denied.

Reliable Coal & Mining Co., 18 IBLA 342 (Jan. 13, 1975)

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

When a coal lease applicant asserts, on appeal, facts which may show it to be entitled to favorable consideration of its lease application under the short-term need criteria promulgated by the Department, the decision rejecting the lease application will be set aside and the case remanded for further consideration.

Idaho Power Company, 20 IBLA 125 (Apr. 28, 1975)

Decisions rejecting coal prospecting permit applications will be affirmed where the decision was made pursuant to and in accordance with Secretarial Order No. 2952 of Feb. 13, 1973.

Charlene Dickman, R. J. Hollberg, Jr., Vernon W. Dickman, 21 IBLA 397 (Aug. 28, 1975)

Rod Shepard, 22 IBLA 60 (Sept. 18, 1975)

D. C. Anderson, 23 IBLA 161 (Dec. 23, 1975)

LEASES

Under 43 CFR 3524.2-1, an application to modify a coal lease without competitive bidding, to include contiguous coal deposits, will be denied if the additional lands requested can be developed as part of an independent operation or there is a competitive interest in them.

Concho Petroleum Company and J. C. Karcher, 22 IBLA 139 (Sept. 26, 1975)

COLOR OR CLAIM OF TITLE

GENERALLY

The Color of Title Act, 43 U.S.C. § 1068 (1970), applies only to public land, i.e., vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon color of title initiated when the subject land was withdrawn from the operation of the public land laws and reserved as national forest land must be rejected.

Ben J. Boschetto, 21 IBLA 193 (July 28, 1975)

The Department must reject a color of title application for land which is not described in the deed or other instrument on which the application is based, even though the applicants and their predecessors in occupancy believed that the public land was covered by the instrument.

LOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

Mere possession and improvement of public land by the applicant in the mistaken belief that he owns it is insufficient basis to qualify for a conveyance under 43 U.S.C. § 1068 (1970). A claim or color of title must be based upon a document, from a source other than the United States, which on its face purports to convey to the applicant the land applied for.

Cloyd and Velma Mitchell, 22 IBLA 299
(Nov. 4, 1975)

The Department of the Interior cannot grant a color of title application for land that was patented and is no longer public land; nor can a color of title application be granted where the title or claim is not derived from a source other than the Government.

A class 1 color of title application for lands classified upon dependent resurvey as omitted swamp and overflowed lands must be rejected when the applicants' 20-year period of peaceful adverse possession under color of title had not been established at the date title vested in the State under the provisions of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970).

Paul H. and Fay L. Sleeper, 22 IBLA 318
(Nov. 10, 1975)

APPLICATIONS

An appeal from a decision rejecting a color of title application will stay the running of the 60-day period, provided by the decision appealed from, for filing affidavits and evidence in support of arguments that the dependent resurvey of the land applied for erroneously classified the land as swamp and overflowed in character.

Paul H. and Fay L. Sleeper, 22 IBLA 318
(Nov. 10, 1975)

CONTESTS AND PROTESTS
(See also Rules of Practice)

GENERALLY

While a mining contest is within the jurisdiction of an Administrative Law Judge, he may reopen the hearing for the production of further evidence before he makes his decision.

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith, et al., 19 IBLA 162 (Mar. 14, 1975)

A mining claim is a claim to property which may not be declared invalid except in accordance with due process of law. Due process consists of proper notice and opportunity for an agency hearing in accordance with the Administrative Procedure Act, and it suffices if the claimant is properly notified and afforded the opportunity to be heard. But there is no requirement that a hearing be held where the contestee fails to avail himself of the opportunity for a hearing within the time provided.

United States v. James R. and Sammy B. Ragsdale, 20 IBLA 348 (June 11, 1975)

A protestant against the filing of a survey plat bears the burden of proof, i.e., the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant state has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the state under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, i.e., the risk of nonpersuasion, in the proceeding.

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the state's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

Demonstration that the field notes accompanying the plat of survey inaccurately or incompletely recite the history of the lands surveyed does not require rejection of the survey or field notes, when it is not disputed that the field notes accurately describe the evidence of the history of settlement and use visible during

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

examination and survey, and when it is concluded that the survey itself was properly executed.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

Where the answer to a mining contest complaint denying the charges is timely filed by one contestee, but is untimely filed by all other contestees, the charges as to those contestees filing untimely answers will be taken as admitted and their interests in the mining claims will be declared null and void. The contestee who filed a timely answer is entitled to a hearing as to the validity of the claims.

United States v. Albert S. Hunter, et al., 22 IBLA 28 (Sept. 10, 1975)

CONTRACTS
(See also Delegation of Authority, Rules of Practice)

CONSTRUCTION AND OPERATION

Generally

In interpreting provisions of state leases which have been validated under sec. 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1335 (1970), the Department will give great weight to judicial and administrative interpretations rendered by officials of that State. Where, however, there is a conflict of opinion between state officials as to the proper interpretation of a provision of a state lease, the Department of the Interior will independently interpret that section, applying the general rules of contract construction.

Ocean Drilling & Exploration Company, Chevron Oil Company, 21 IBLA 137 (July 15, 1975)

Actions of Parties

Where the practice of a construction contractor was to separate claims for an equitable adjustment for increased costs due to a change from its claims for delays to the work caused by the change and the evidence established that the contractor's delay claim resulting from a change was pending before the contracting officer at the time the contractor agreed to and executed a modification settling the equitable adjustment for direct costs attributable to the change, the Government's contention that the delay claim was barred by accord and satisfaction was rejected since it is well settled that an agreement does not operate as an accord as to matters not contemplated by the agreement.

Where the contractor's offer to perform certain changed work for a lump sum was accepted and the agreement and the price was incorporated into a modification which the contractor executed without reservation or exception and the lump sum was subsequently paid, the contractor's subsequent claim for delays to the work attributable to the change was barred by accord and satisfaction.

Appeal of Hensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs

A contractor who submitted a claim for an equitable adjustment based on rental rates for equipment idled by Government action, but failed to prove ownership of the equipment or whether a rental had taken place, was entitled only to ownership costs of the equipment reduced by one-half to allow for the lack of wear and tear on the idle equipment.

Appeal of Thorson, Inc., IBCA-993-4-73 (June 30, 1975)

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of VTN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975) 82 I.D. 527

Assignment of Claims

An assignee under an assignment of the proceeds of a contractor's claim before the Board which had been executed subsequent to completion of performance and the filing of the appeal by the contractor, is not permitted to participate in the appeal, since the Board's jurisdiction, pursuant to the Disputes Clause, extends only to the parties to the contract or to their duly qualified successors.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (Jan. 14, 1975)

Changes and Extras

A multi-item appeal under a contract for construction of a fish barrier is sustained for those items where Government changes in the contract resulted in extra expense and where such expense could be determined from the record.

Appeal of Robert P. Jones, Contractor, IBCA-1002-8-73 (May 6, 1975)

Where a contract for the construction of a bridge substructure contained a provision requiring that employees erecting bridges and structures be protected by safety nets where the use of safety belts and lifelines or other conventional type of protection was impractical and the evidence failed to demonstrate that the use of safety belts and lifelines or other conventional type of protection was practical for workers on concrete piers, the Board denies the contractor's claim for a change based on the fact that it was required to use safety nets to protect workmen from possible falls.

Appeal of Hensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

A rise in the cost of materials after a fixed price construction contract is executed is not a change within the changes clause of the contract.

Appeal of The Minnesota Chippewa Tribe, IBCA-1025-3-74 (May 19, 1975) 82 I.D. 238

Appeal of The Minnesota Chippewa Tribe Construction Company, IBCA-1063-3-75 (July 23, 1975)

A construction contractor's claim for an equitable adjustment based on alleged defective specifications and for corrective work ordered by the Government as a condition to final acceptance of the project was denied, where the specification errors relied upon were obvious, there was no evidence that the contractor had been thereby misled to its detriment and the record did not establish that the corrective work ordered and performed was beyond the requirements of the contract. A claim for costs incurred in replacing door locks was allowed where the evidence established that locks ordered installed by the contracting officer were not a requirement of the contract.

Appeal of J. D. Piercey, IBCA-1035-6-74 (July 18, 1975)

The Government failed to sustain its burden of proving entitlement to a reduction of the contract price as an equitable adjustment for quantities of asphalt concrete for road repair in excess of the Government estimate. The evidence showed that neither party relied on the estimate, that the Government left the selection and manner of using equipment to the contractor and that the Government issued a change order when it observed the contractor's more efficient operation. The work described in the change order was the same work described in the contract and the reduction in unit cost of performance was not the result of the change order but was the result of the contractor's efficiency.

Appeal of Quintana Construction Co., Inc., IBCA-1028-4-74 (July 24, 1975) 82 I.D. 343

Under a construction contract for a beach nourishment project at Cape Hatteras involving a contractor's claim for equitable adjustment based upon the Government directing the beach fill to be placed in a manner differing from the typical cross section shown on the contract drawing, the Board finds that the 20-day notice provision of the Changes clause should not preclude consideration of the claim on the merits where there is no one action of the Government which can be pointed to as the identifiable event upon which the claim is grounded and from which the contractor's delay in presenting the claim can be measured, particularly where the evidence of record indicates that the Government's actions contributed to and may even have been the principal cause of the delay in giving notice of the claim.

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

A special provision authorizing the contracting officer to adjust or revise the limits of the work during performance to reflect the conditions encountered and thereby provide for maximum use of material available with the funds allotted is found to vest the contracting officer with no plenary authority to direct the placement of the beach fill where the authorization to adjust or revise the limits of the work is circumscribed by the use of the word "approximate."

In a case involving the question of the importance to be ascribed to the typical cross section shown on the contract drawings, the Board finds that the drawings contained positive representations on which the contractor was entitled to rely and did rely in submitting its bid, noting, in connection therewith, that the interpretation advanced by the Government with respect to certain provisions on the drawings, in the contract and in a change order would render inoperative or superfluous other requirements clearly imposed by the drawings or contract terms. Previously the Board had found that the contractor's site visit was adequate and in any event could not have revealed conditions created by storms which took place several months after the scheduled site visit concluded.

An estimated quantities provision under which the Government was authorized to obtain additional quantities of beach fill at the unit price specified in the contract so long as the additional quantities did not exceed 25 percent of the original total contract price is found not to preclude an adjustment under the Changes clause for clearly unforeseeable costs to the extent the contractor shows (i) the basis upon which its bid was calculated and (ii) the causal connection between the increased costs and the inability or the failure of the Government to adhere to the typical cross section shown on the contract drawings in directing the placement of the fill.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of WTN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975) 82 I.D. 527

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Company (a/k/a Iconco), IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

Conflicting Clauses

In a case involving the question of the importance to be ascribed to the typical cross section shown on the contract drawings, the Board finds that the drawings contained positive representations on which the contractor was entitled to rely and did rely in submitting its bid, noting, in connection therewith, that the interpretation advanced by the Government with respect to certain provisions on the drawings, in the contract and in a change order would render inoperative or superfluous other requirements clearly imposed by the drawings or contract terms. Previously the Board had found that the contractor's site visit was adequate and in any event could not have revealed conditions created by storms which took place several months after the scheduled site visit concluded.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Construction Against Drafter

The Board denies a construction contractor's claim for additional pay quantities where the evidence did not establish a basis for application of the rule of contra proferentem, the contractor's interpretation of the specifications was not shown to be reasonable and the record did not establish error in the Bureau's computation of pay quantities.

Appeal of Wm. V. Montin d/b/s Montin Construction Company, IBCA-1051-12-74 (May 29, 1975)

The board sustains the contractor's claim that it be paid for gravel representing the area of the pipe within the pay lines, holding that in the particular circumstances the contractor's interpretation that the pay line quantity was merely nominal or hypothetical was reasonable and rejecting the Government's contention that the difference between the estimated quantity and the pay quantity under appellant's interpretation should have prompted appellant to inquire of the contracting officer.

Appeal of Whalen & Company, IBCA-1034-5-74 (July 18, 1975) 82 I.D. 335

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses

Where a contract for furnishing and erecting a steel building was terminated for default and the contractor appealed the termination contending that the specifications were written around the product of a particular manufacturer and that under the material and workmanship clause of the General Provisions (Standard Form 23-A, Oct. 1969 Edition) it was entitled to furnish an "equal" product, the Board holds that the restrictive nature of the specifications is no defense to the termination where the evidence fails to establish that the building offered was, in fact, equal to the building described in the specifications.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

Contracting Officer

A special provision authorizing the contracting officer to adjust or revise the limits of the work during performance to reflect the conditions encountered and thereby provide for maximum use of material available with the funds allotted is found to vest the contracting officer with no plenary authority to direct the placement of the beach fill where the authorization to adjust or revise the limits of the work is circumscribed by the use of the word "approximate."

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Contractor

Contractor must have adequate equipment and personnel to perform the work required by the contract.

Appeal of Kent Nicoll, IBCA-1040-8-74 (July 31, 1975)

Drawings and Specifications

Where a contract for the construction of a bridge substructure contained a provision requiring that employees erecting bridges and structures be protected by safety nets where the use of safety belts and lifelines or other conventional type of protection was impractical and the evidence failed to demonstrate that the use of safety belts and lifelines or other conventional type of protection was practical for workers on concrete piers, the Board denies the contractor's claim for a change based on the fact that it was required to use safety nets to protect workmen from possible falls.

Appeal of Hensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

The Board denies a construction contractor's claim for additional pay quantities where the evidence did not establish a basis for application of the rule of contra proferentem, the contractor's

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

interpretation of the specifications was not shown to be reasonable and the record did not establish error in the Bureau's computation of pay quantities.

Appeal of Wm. V. Montin d/b/a Montin Construction Company, IBCA-1051-12-74 (May 29, 1975)

The board sustains the contractor's claim that it be paid for gravel representing the area of the pipe within the pay lines, holding that in the particular circumstances the contractor's interpretation that the pay line quantity was merely nominal or hypothetical was reasonable and rejecting the Government's contention that the difference between the estimated quantity and the pay quantity under appellant's interpretation should have prompted appellant to inquire of the contracting officer.

Appeal of Whalen & Company, IBCA-1034-5-74 (July 18, 1975) 82 I.D. 335

Under a construction contract for a beach nourishment project at Cape Hatteras involving a contractor's claim for equitable adjustment based upon the Government directing the beach fill to be placed in a manner differing from the typical cross section shown on the contract drawing, the Board finds that the 20-day notice provision of the Changes clause should not preclude consideration of the claim on the merits where there is no one action of the Government which can be pointed to as the identifiable event upon which the claim is grounded and from which the contractor's delay in presenting the claim can be measured, particularly where the evidence of record indicates that the Government's actions contributed to and may even have been the principal cause of the delay in giving notice of the claim.

In a case involving the question of the importance to be ascribed to the typical cross section shown on the contract drawings, the Board finds that the drawings contained positive representations on which the contractor was entitled to rely and did rely in submitting its bid, noting, in connection therewith, that the interpretation advanced by the Government with respect to certain provisions on the drawings, in the contract and in a change order would render inoperative or superfluous other requirements clearly imposed by the drawings or contract terms. Previously the Board had found that the contractor's site visit was adequate and in any event could not have revealed conditions created by storms which took place several months after the scheduled site visit concluded.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Duty to Inquire

Where a request for proposals for the construction of a pipeline provided that certain pipe and fittings for the pipeline would be furnished by the Government and appellant's proposal, reasonably interpreted, excepted to material the request for proposals provided was to be furnished by the contractor, the Board sustains the contractor's claim for material it furnished, holding that the Bureau, in failing to seek confirmation of its interpretation of appellant's proposal, accepted the risk of the accuracy of its interpretation.

Appeal of Wm. V. Montin d/b/a Montin Construction Company, IBCA-1051-12-74 (May 29, 1975)

The board sustains the contractor's claim that it be paid for gravel representing the area of the pipe within the pay lines, holding that in the particular circumstances the contractor's interpretation that the pay line quantity was merely nominal or hypothetical was reasonable and rejecting the Government's contention that the difference between the estimated quantity and the pay quantity under appellant's interpretation should have prompted appellant to inquire of the contracting officer.

Appeal of Whalen & Company, IBCA-1034-5-74 (July 18, 1975) 82 I.D. 335

Estimated Quantities

The Government failed to sustain its burden of proving entitlement to a reduction of the contract price as an equitable adjustment for quantities of asphalt concrete for road repair in excess of the Government estimate. The evidence showed that neither party relied on the estimate, that the Government left the selection and manner of using equipment to the contractor and that the Government issued a change order when it observed the contractor's more efficient operation. The work described in the change order was the same work described in the contract and the reduction in unit cost of performance was not the result of the change order but was the result of the contractor's efficiency.

Appeal of Quintana Construction Co., Inc., IBCA-1028-4-74 (July 24, 1975) 82 I.D. 343

An estimated quantities provision under which the Government was authorized to obtain additional quantities of beach fill at the unit price specified in the contract so long as the additional quantities did not exceed 25 percent of the original total contract price is found not to preclude an adjustment under the Changes clause

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Estimated Quantities--Continued

for clearly unforeseeable costs to the extent the contractor shows (1) the basis upon which its bid was calculated and (2) the causal connection between the increased costs and the inability or the failure of the Government to adhere to the typical cross section shown on the contract drawings in directing the placement of the fill.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73
(Sept. 29, 1975) 82 I.D. 459

General Rules of Construction

A federal contract is governed by federal contract law, rather than the law of the state in which the contract is executed.

Article 2 of the Uniform Commercial Code is applicable to transactions in goods, not to construction contracts.

Appeal of The Minnesota Chippewa Tribe, IBCA-1025-3-74
(May 19, 1975) 82 I.D. 238

Government mineral leases are subject to the same rules of construction as those applied in interpreting a contract between two private parties.

While a general rule of contract construction provides that when two provisions of a lease conflict, and one is a printed form while the other is a typed or written addendum, the latter provision will be given force and effect over the former, this rule is only relevant where the two provisions cannot be reconciled.

The addition to a standard lease clause, reserving to the Secretary the right to establish reasonable minimum values for minerals mined, of an insertion which spells out how the gross value is to be set does not deprive the Secretary of the reserved right where the application of the added provisions would deprive the United States of any payment for a recoverable associated mineral.

St. Joe Minerals Corporation, 20 IBLA 272
(May 19, 1975)

Government permits are subject to the same rules of construction as those applied in interpreting a contract between private parties, although contracts and permits have different legal import.

Where the Government has the absolute right under the terms of a permit to cancel such permit, notice to cancel the permits, properly given, cannot be considered arbitrary or capricious if made in the regular course of conducting government business in the public interest.

L. O. Power, et al., 22 IBLA 15 (Sept. 5, 1975)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

In a case involving the question of the importance to be ascribed to the typical cross section shown on the contract drawings, the Board finds that the drawings contained positive representations on which the contractor was entitled to rely and did rely in submitting its bid, noting, in connection therewith, that the interpretation advanced by the Government with respect to certain provisions on the drawings, in the contract and in a change order would render inoperative or superfluous other requirements clearly imposed by the drawings or contract terms. Previously the Board had found that the contractor's site visit was adequate and in any event could not have revealed conditions created by storms which took place several months after the scheduled site visit concluded.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73
(Sept. 29, 1975) 82 I.D. 459

An appeal before the Board on remand from the Court of Claims with instructions to admit evidence, previously excluded under the parol evidence rule, for the purpose of showing a pre-award agreement or an express or implied concession as to the rate of use of helicopter services, is denied where the record, augmented as the Court directed, shows that the Government did not change its method of contracting at appellant's request but rejected the proposal to include a guaranteed minimum daily rate of use and where an internal memorandum from appellant's president shows that he understood at the time of award that the contract could be flown at the rate of 5 hours per day rather than the rate of 7 hours per day alleged later when the contract proved unprofitable.

Appeal of Inter*Helo, Inc., IBCA-713-5-68
(Ct. Cl. No. 54-74) (Dec. 1, 1975) 82 I.D. 591

Government-furnished Property

Where a request for proposals for the construction of a pipeline provided that certain pipe and fittings for the pipeline would be furnished by the Government and appellant's proposal, reasonably interpreted, excepted to material the request for proposals provided was to be furnished by the contractor, the Board sustains the contractor's claim for material it furnished, holding that the Bureau, in failing to seek confirmation of its interpretation of appellant's proposal, accepted the risk of the accuracy of its interpretation.

Appeal of Wm. V. Montin d/b/a Montin Construction Company, IBCA-1031-12-74 (May 29, 1975)

Modification of Contracts

Generally

Where the practice of a construction contractor was to separate claims for an equitable adjustment for increased costs due to a change from its claims for delays to the work caused by the change and the evidence established that the contractor's delay claim resulting from a change was pending before the contracting officer at the time the contractor agreed to and executed a modification settling the equitable adjustment for direct costs attributable to the change, the Government's contention that the delay claim was barred by accord and satisfaction was rejected since it is well settled that an agreement does not operate as an accord as to matters not contemplated by the agreement.

Where the contractor's offer to perform certain changed work for a lump sum was accepted and the agreement and the price was incorporated into a modification which the contractor executed without reservation or exception and the lump sum was subsequently paid, the contractor's subsequent claim for delays to the work attributable to the change was barred by accord and satisfaction.

Appeal of Hensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

A contractor's acceptance of a change order is found to be no bar to consideration of a claim under the Changes clause where the evidence shows that the claim involved had neither arisen nor been discussed prior to the time the change order in question was executed.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Notices

Under a construction contract for a beach nourishment project at Cape Hatteras involving a contractor's claim for equitable adjustment based upon the Government directing the beach fill to be placed in a manner differing from the typical cross section shown on the contract drawing, the Board finds that the 20-day notice provision of the Changes clause should not preclude consideration of the claim on the merits where there is no one action of the Government which can be pointed to as the identifiable event upon which the claim is grounded and from which the contractor's delay in presenting the claim can be measured, particularly where the evidence of record indicates that the Government's actions contributed to and may even have been the principal cause of the delay in giving notice of the claim.

A claim under the Suspension of Work clause is denied where the Board finds (i) that the contracting officer acted within his discretion in issuing an order directing the suspension of all work in the wake of a devastating storm at Cape Hatteras with a view to determining

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Notices--Continued

whether and, if so, how the work under a beach nourishment contract should proceed or, alternatively, whether the contract should be terminated for the convenience of the Government; (ii) that the contractor had failed to show that its costs would have been any less if the stop work order had been issued at an earlier time; (iii) that suspending the contract work for the 5 working days covered by the stop order did not involve delaying the work for an unreasonable period of time; and (iv) that showing the contract work to have been suspended or delayed for an unreasonable period of time is a prerequisite to recovery under the Suspension of Work clause in all cases including those in which a written order to suspend work has been given as contemplated by paragraph (a) of the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

DISPUTES AND REMEDIES

Appeals

Where a contractor has filed an appeal and has failed to file a complaint when often requested to do so over a two-year period, the appeal is dismissed for want of prosecution.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73 (Sept. 2, 1975) 82 I.D. 427

Burden of Proof

Where a contract for the construction of a bridge substructure contained a provision requiring that employees erecting bridges and structures be protected by safety nets where the use of safety belts and lifelines or other conventional type of protection was impractical and the evidence failed to demonstrate that the use of safety belts and lifelines or other conventional type of protection was practical for workers on concrete piers, the Board denies the contractor's claim for a change based on the fact that it was required to use safety nets to protect workmen from possible falls.

Appeal of Hensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

The Board denies a construction contractor's claim for additional pay quantities where the evidence did not establish a basis for application of the rule of contra proferentem, the contractor's interpretation of the specifications was not shown to be reasonable and the record did not establish error in the Bureau's computation of pay quantities.

Appeal of Wm. V. Montin d/b/a Montin Construction Company, IBCA-1051-12-74 (May 29, 1975)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

A construction contractor's claim for an equitable adjustment based on alleged defective specifications and for corrective work ordered by the Government as a condition to final acceptance of the project was denied, where the specification errors relied upon were obvious, there was no evidence that the contractor had been thereby misled to its detriment and the record did not establish that the corrective work ordered and performed was beyond the requirements of the contract. A claim for costs incurred in replacing door locks was allowed where the evidence established that locks ordered installed by the contracting officer were not a requirement of the contract.

Appeal of J. D. Piercey, IBCA-1035-6-74 (July 18, 1975)

The Government failed to sustain its burden of proving entitlement to a reduction of the contract price as an equitable adjustment for quantities of asphalt concrete for road repair in excess of the Government estimate. The evidence showed that neither party relied on the estimate, that the Government left the selection and manner of using equipment to the contractor and that the Government issued a change order when it observed the contractor's more efficient operation. The work described in the change order was the same work described in the contract and the reduction in unit cost of performance was not the result of the change order but was the result of the contractor's efficiency.

Appeal of Quintana Construction Co., Inc., IBCA-1028-4-74 (July 24, 1975) 82 I.D. 343

A claim under the Suspension of Work clause is denied where the Board finds (i) that the contracting officer acted within his discretion in issuing an order directing the suspension of all work in the wake of a devastating storm at Cape Hatteras with a view to determining whether and, if so, how the work under a beach nourishment contract should proceed or, alternatively, whether the contract should be terminated for the convenience of the Government; (ii) that the contractor had failed to show that its costs would have been any less if the stop work order had been issued at an earlier time; (iii) that suspending the contract work for the 5 working days covered by the stop order did not involve delaying the work for an unreasonable period of time; and (iv) that showing the contract work to have been suspended or delayed for an unreasonable period of time is a prerequisite to recovery under the Suspension of Work clause in all cases including those in which a written order to suspend work has been given as contemplated by paragraph (a) of the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

To be able to support a claim for excess reprocurement costs, the Government must establish that work under a reprocurement contract has been performed and that payment has been made.

Appeal of Ballwebers Cleaning Service, IBCA-1057-1-75 (Oct. 2, 1975)

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Company (a/k/a Iconc IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

Damages

Generally

An Oil and Gas Supervisor of the Geological Survey has authority to demand prejudgment interest based upon the failure of an oil and gas lessee to pay timely royalties owed to the Government, despite the fact that the Supervisor is an employee of the Executive Branch.

Atlantic Richfield Company, 21 IBLA 98 (June 30, 1975) 82 I.D. 316

Actual Damages

To be able to support a claim for excess reprocurement costs, the Government must establish that work under a reprocurement contract has been performed and that payment has been made.

Appeal of Ballwebers Cleaning Service, IBCA-1057-1-75 (Oct. 2, 1975)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Measurement

Even where statute, regulation, and the oil and gas lease itself do not specifically provide for the payment of prejudgment interest on royalties owed to the United States, such interest may be imposed by the United States; equity principles may authorize such imposition. A charge for such interest may be imposed despite delays in processing the debtor's appeals, where the debtor assertedly relied upon an earlier Departmental decision which, only when taken out of context, would tend to support the debtor's posture.

Atlantic Richfield Company, 21 IBLA 98 (June 30, 1975) 82 I.D. 316

Equitable Adjustments

In a case where the Government (i) rejected certain conditions attached to the contractor's offer to perform at the contract unit price additional excavation due to a directed change, (ii) determined that the contractor was entitled to an extension of 82 days as the time required to perform the additional excavation which was accepted by the contractor, (iii) recognized that the contractor might be entitled to an additional extension due to certain operations being extended into the inclement winter weather and (iv) subsequently granted the contractor a 20-day time extension due to unusually severe weather, the Board finds the contractor to be entitled to an equitable adjustment for increased costs of working in winter weather which were the direct and inevitable consequence of the directed change, rejecting Government contentions that the contractor's claim was barred by accord and satisfaction or that it represented costs for working in inclement weather for which the contract made no provision.

Appeal of Hensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

A road-building contractor was entitled to an equitable adjustment under the suspension of work clause for idle equipment expense where the Government stopped the contractor from hauling gravel base as a result of failing density tests on a nuclear-electronic gauge not authorized by the contract for testing compaction and where, after the contractor protested the use of such gauge and requested tests in accordance with the contract, the Government further delayed conducting the sand-cone tests required by the contract, causing contractor's gravel hauling equipment to be idle for two days and further causing the paving operations to be delayed by two days.

Appeal of Thorson, Inc., IBCA-993-4-73 (June 30, 1975)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

The Government failed to sustain its burden of proving entitlement to a reduction of the contract price as an equitable adjustment for quantities of asphalt concrete for road repair in excess of the Government estimate. The evidence showed that neither party relied on the estimate, that the Government left the selection and manner of using equipment to the contractor and that the Government issued a change order when it observed the contractor's more efficient operation. The work described in the change order was the same work described in the contract and the reduction in unit cost of performance was not the result of the change order but was the result of the contractor's efficiency.

Appeal of Quintana Construction Co., Inc., IBCA-1028-4-74 (July 24, 1975) 82 I.D. 343

Under a construction contract for a beach nourishment project at Cape Hatteras involving a contractor's claim for equitable adjustment based upon the Government directing the beach fill to be placed in a manner differing from the typical cross section shown on the contract drawing, the Board finds that the 20-day notice provision of the Changes clause should not preclude consideration of the claim on the merits where there is no one action of the Government which can be pointed to as the identifiable event upon which the claim is grounded and from which the contractor's delay in presenting the claim can be measured, particularly where the evidence of record indicates that the Government's actions contributed to and may even have been the principal cause of the delay in giving notice of the claim.

A contractor's acceptance of a change order is found to be no bar to consideration of a claim under the Changes clause where the evidence shows that the claim involved had neither arisen nor been discussed prior to the time the change order in question was executed.

A special provision authorizing the contracting officer to adjust or revise the limits of the work during performance to reflect the conditions encountered and thereby provide for maximum use of material available with the funds allotted is found to vest the contracting officer with no plenary authority to direct the placement of the beach fill where the authorization to adjust or revise the limits of the work is circumscribed by the use of the word "approximate."

An estimated quantities provision under which the Government was authorized to obtain additional quantities of beach fill at the unit price specified in the contract so long as the additional quantities did not exceed 25 percent of the original total contract price is found not to preclude an adjustment under the Changes clause for clearly unforeseeable costs to the extent

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

the contractor shows (i) the basis upon which its bid was calculated and (ii) the causal connection between the increased costs and the inability or the failure of the Government to adhere to the typical cross section shown on the contract drawings in directing the placement of the fill.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73
(Sept. 29, 1975) 82 I.D. 459

Jurisdiction

An assignee under an assignment of the proceeds of a contractor's claim before the Board which had been executed subsequent to completion of performance and the filing of the appeal by the contractor, is not permitted to participate in the appeal, since the Board's jurisdiction, pursuant to the Disputes Clause, extends only to the parties to the contract or to their duly qualified successors.

Appeal of Evergreen Engineering, Inc.,
IBCA-994-5-73 (Jan. 14, 1975)

An appeal will be dismissed where the claim on which it is based arose from a mistake in connection with the contractor's bid, resulting from the failure of his timely dispatched telegraphic bid modification to be received prior to bid opening and where it is clear that he intended to file his appeal in the General Accounting Office.

Appeal of P. L. Larsen Co., IBCA-1054-1-75
(Mar. 25, 1975)

An Oil and Gas Supervisor of the Geological Survey has authority to demand prejudgment interest based upon the failure of an oil and gas lessee to pay timely royalties owed to the Government, despite the fact that the Supervisor is an employee of the Executive Branch.

Atlantic Richfield Company, 21 IBLA 98 (June 30,
1975) 82 I.D. 316

Where a construction contractor's bid for furnishing and erecting a steel building was slightly in excess of 53 percent of the next low bid and the record indicates that the contractor's bid may have been occasioned by a misunderstanding as to the specification requirements, but fails to show that the contractor was requested to or did verify its bid prior to award, the board finds that it is without jurisdiction to grant relief based upon a mistake in bid, noting, however, that the appellant may be entitled to relief in another forum.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

Where an appeal is timely the absence from a contracting officer's letter of a terminal paragraph advising the contractor of his right of appeal under the Disputes clause is not a basis for remand to the contracting officer.

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of VTN Colorado, Inc., IBCA-1073-8-75
(Oct. 29, 1975) 82 I.D. 527

Substantial Evidence

A multi-item appeal under a contract for construction of a fish barrier is sustained for those items where Government changes in the contract resulted in extra expense and where such expense could be determined from the record.

Appeal of Robert P. Jones, Contractor,
IBCA-1002-8-73 (May 6, 1975)

Termination for Default

Generally

Where a contractor has given notice that it had no intention of performing the contract unless the contract price was increased to cover the rise in material costs and had made no effort to order required supplies, the Government could terminate the contract for default in advance of the time specified for delivery.

An economic rise in costs of materials after a fixed price supply contract is executed does not excuse a contractor from performing the contract.

Appeal of SRM Manufacturing Co., IBCA-1032-4-74
(May 29, 1975)

When contractor fails to perform pursuant to specifications in a janitorial service contract and is given notice to correct the deficiencies but fails to do so and offers no excusable cause justifying the failure the contract can properly be terminated for default.

Appeal of Ballwebers Cleaning Service, IBCA-1057-1-75
(Oct. 2, 1975)

Where a construction contractor's bid for furnishing and erecting a steel building was slightly in excess of 53 percent of the next low bid and the record indicates that the contractor's bid may have been occasioned by a misunderstanding as to the specification requirements, but fails to show that the contractor was requested to or did verify its bid prior to award, the board finds that it is

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

without jurisdiction to grant relief based upon a mistake in bid, noting, however, that the appellant may be entitled to relief in another forum.

Where a contract for furnishing and erecting a steel building was terminated for default and the contractor appealed the termination contending that the specifications were written around the product of a particular manufacturer and that under the material and workmanship clause of the General Provisions (Standard Form 23-A, Oct. 1969 Edition) it was entitled to furnish an "equal" product, the Board holds that the restrictive nature of the specifications is no defense to the termination where the evidence fails to establish that the building offered was, in fact, equal to the building described in the specifications.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

FORMATION AND VALIDITY

Generally

In a case where the Government (i) rejected certain conditions attached to the contractor's offer to perform at the contract unit price additional excavation due to a directed change, (ii) determined that the contractor was entitled to an extension of 82 days as the time required to perform the additional excavation which was accepted by the contractor, (iii) recognized that the contractor might be entitled to an additional extension due to certain operations being extended into the inclement winter weather and (iv) subsequently granted the contractor a 20-day time extension due to unusually severe weather, the Board finds the contractor to be entitled to an equitable adjustment for increased costs of working in winter weather which were the direct and inevitable consequence of the directed change, rejecting Government contentions that the contractor's claim was barred by accord and satisfaction or that it represented costs for working in inclement weather for which the contract made no provision.

Appeal of Hensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

Mistakes

Where a construction contractor's bid for furnishing and erecting a steel building was slightly in excess of 53 percent of the next low bid and the record indicates that the contractor's bid may have been occasioned by a misunderstanding as to the specification requirements, but fails to show that the contractor was requested to or did verify its bid prior to award, the board finds that it is without jurisdiction to grant relief based upon a mistake in bid, noting, however, that the appellant may be entitled to relief in another forum.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

FORMATION AND VALIDITY--Continued

Negotiated Contracts

Where a request for proposals for the construction of a pipeline provided that certain pipe and fittings for the pipeline would be furnished by the Government and appellant's proposal, reasonably interpreted, excepted to material the request for proposals provided was to be furnished by the contractor, the Board sustains the contractor's claim for material it furnished, holding that the Bureau, in failing to seek confirmation of its interpretation of appellant's proposal, accepted the risk of the accuracy of its interpretation.

Appeal of Wm. V. Montin d/b/a Montin Construction Company, IBCA-1051-12-74 (May 29, 1975)

PERFORMANCE OR DEFAULT

Acceptance of Performance

A construction contractor's claim for an equitable adjustment based on alleged defective specifications and for corrective work ordered by the Government as a condition to final acceptance of the project was denied, where the specification errors relied upon were obvious, there was no evidence that the contractor had been thereby misled to its detriment and the record did not establish that the corrective work ordered and performed was beyond the requirements of the contract. A claim for costs incurred in replacing door locks was allowed where the evidence established that locks ordered installed by the contracting officer were not a requirement of the contract.

Appeal of J. D. Piercey, IBCA-1035-6-74 (July 18, 1975)

Breach

Where a contract for furnishing and erecting a steel building was terminated for default and the contractor appealed the termination contending that the specifications were written around the product of a particular manufacturer and that under the material and workmanship clause of the General Provisions (Standard Form 23-A, Oct. 1969 Edition) it was entitled to furnish an "equal" product, the Board holds that the restrictive nature of the specifications is no defense to the termination where the evidence fails to establish that the building offered was, in fact, equal to the building described in the specifications.

Appeal of J. D. Piercey, IBCA-1013-12-73 (Oct. 17, 1975)

Compensable Delays

In a case where the Government (i) rejected certain conditions attached to the contractor's offer to perform at the contract unit price additional excavation due to a directed change, (ii) determined that the contractor was entitled to an extension of 82 days as the time required to perform the additional excavation which was accepted by the contractor, (iii) recognized that the contractor might be entitled to an additional extension due to certain operations being extended

Compensable Delays--Continued

into the inclement winter weather and (iv) subsequently granted the contractor a 20-day time extension due to unusually severe weather, the Board finds the contractor to be entitled to an equitable adjustment for increased costs of working in winter weather which were the direct and inevitable consequence of the directed change, rejecting Government contentions that the contractor's claim was barred by accord and satisfaction or that it represented costs for working in inclement weather for which the contract made no provision.

Appeal of Wensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

The Government did not cause any compensable delay in the commencement of the work when the Government issued the notice to proceed as soon as the performance and payment bonds required by the contract were received.

Appeal of The Minnesota Chippewa Tribe, IBCA-1025-3-74 (May 19, 1975) 82 I.D. 238

Excusable Delays

Where a contractor has given notice that it had no intention of performing the contract unless the contract price was increased to cover the rise in material costs and had made no effort to order required supplies, the Government could terminate the contract for default in advance of the time specified for delivery.

An economic rise in costs of materials after a fixed price supply contract is executed does not excuse a contractor from performing the contract.

Appeal of SRM Manufacturing Co., IBCA-1032-4-74 (May 29, 1975)

Delay caused by failure to have sufficient equipment and personnel available is not a valid reason to allow an extension of time to perform the work required by the contract.

Appeal of Kent Nicoll, IBCA-1040-8-74 (July 31, 1975)

When contractor fails to perform pursuant to specifications in a janitorial service contract and is given notice to correct the deficiencies but fails to do so and offers no excusable cause justifying the failure the contract can properly be terminated for default.

Appeal of Ballwebers Cleaning Service, IBCA-1057-1-75 (Oct. 2, 1975)

Inspection

A special provision authorizing the contracting officer to adjust or revise the limits of the work during performance to reflect the conditions encountered and thereby provide for maximum use of material available with the funds allotted is found to vest the contracting officer with no plenary authority to direct the placement of the beach fill where the authorization to adjust or revise the limits of the work is circumscribed by the use of the word "approximate."

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Release and Settlement

Where the practice of a construction contractor was to separate claims for an equitable adjustment for increased costs due to a change from its claims for delays to the work caused by the change and the evidence established that the contractor's delay claim resulting from a change was pending before the contracting officer at the time the contractor agreed to and executed a modification settling the equitable adjustment for direct costs attributable to the change, the Government's contention that the delay claim was barred by accord and satisfaction was rejected since it is well settled that an agreement does not operate as an accord as to matters not contemplated by the agreement.

Where the contractor's offer to perform certain changed work for a lump sum was accepted and the agreement and the price was incorporated into a modification which the contractor executed without reservation or exception and the lump sum was subsequently paid, the contractor's subsequent claim for delays to the work attributable to the change was barred by accord and satisfaction.

Appeal of Wensel Phelps Construction Company, IBCA-1010-11-73 (May 8, 1975) 82 I.D. 199

A contractor's acceptance of a change order is found to be no bar to consideration of a claim under the Changes clause where the evidence shows that the claim involved had neither arisen nor been discussed prior to the time the change order in question was executed.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Suspension of Work

A claim under the Suspension of Work clause is denied where the Board finds (1) that the contracting officer acted within his discretion in issuing an order directing the suspension of all work in the wake of a devastating storm

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Suspension of Work--Continued

at Cape natteras with a view to determining whether and, if so, how the work under a beach nourishment contract should proceed or, alternatively, whether the contract should be terminated for the convenience of the Government; (ii) that the contractor had failed to show that its costs would have been any less if the stop work order had been issued at an earlier time; (iii) that suspending the contract work for the 5 working days covered by the stop order did not involve delaying the work for an unreasonable period of time; and (iv) that showing the contract work to have been suspended or delayed for an unreasonable period of time is a prerequisite to recovery under the Suspension of Work clause in all cases including those in which a written order to suspend work has been given as contemplated by paragraph (a) of the clause.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

CONVEYANCES

REVERTERS

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

COURTS

A demand by the Geological Survey for prejudgment interest for delayed payment of additional royalties owed to the Government is not necessarily unenforceable in the courts because it was not asserted as a counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure.

Atlantic Richfield Company, 21 IBLA 98 (June 30, 1975) 82 I.D. 316

DELEGATION OF AUTHORITY

GENERALLY

The Bureau of Land Management has been delegated authority over the adjudication of reclamation homestead applications.

Richard E. Crill, et al., 18 IBLA 428 (Feb. 14, 1975)

DESERT LAND ENTRY

GENERALLY

An arrangement by which an entity obtains mortgages on desert land entries and also obtains leases of a possible twelve-year duration on the desert land entries, the result of which is the vesting of effective control of the entries in such entity, constitutes a holding within the purview of sec. 7 of the Act of Mar. 3, 1877, as amended.

"Hold." Any person or entity which has acquired actual possession and the right thereof to more than 320 acres of desert lands "holds" such acreage within the meaning of the prohibition of sec. 7 of the Act of Mar. 3, 1877, as amended.

"Otherwise." As used in sec. 7 of the Act of Mar. 3, 1877, as amended, "no person or association of persons shall hold by assignment or otherwise * * *," "otherwise" is not limited to other means equivalent to assignment but rather embraces all mechanisms whereby control of and benefit from an entry or entries are accumulated and transferred.

Violation of the prohibition against holding an excess of 320 acres constitutes a failure to comply with the requirements of law and such entries are properly canceled.

Estoppel will not lie against the Government where there is no showing that the parties to illegal agreements relied in any way on the statements or acts of Government officials.

United States v. G. Patrick Morris, et al., 19 IBLA 350 (Apr. 7, 1975) 82 I.D. 146

Sec. 7 of the Act of Mar. 3, 1891, provides that no person or association of persons shall hold by assignment or otherwise, prior to the issue of patent, more than 320 acres of arid or desert lands; the terms "hold," "assignment" and "otherwise" are words of broad significance and will be defined in such manner to effectuate the purposes of the Act, to wit, to prevent anyone from holding more than 320 acres of desert lands to the exclusion of bona fide settlers or the entrymen of record.

Any person or association of persons who controls, possesses and receives substantial benefits from desert lands will be regarded as "holding" such lands within the meaning of the Act of Mar. 3, 1891.

United States v. Golden Grigg, et al., 19 IBLA 379 (Apr. 7, 1975) 82 I.D. 123

Excepting in of Nevada, no person shall be entitled to make entry of desert lands unless he is a resident of the state in which the land is located. An applicant's conditional, future-oriented intention to reside in the state is insufficient to qualify.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975) 82 I.D. 377

DESERT LAND ENTRY--Continued

APPLICANTS

Excepting in of Nevada, no person shall be entitled to make entry of desert lands unless he is a resident of the state in which the land is located. An applicant's conditional, future-oriented intention to reside in the state is insufficient to qualify.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

APPLICATIONS

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crapo, Richard L. Crapo, 19 IBLA 208 (Mar. 21, 1975)

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piece-meal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

ASSIGNMENT

Where an allowed desert land entry was assigned to a qualified individual and the assignment was duly approved, a subsequent determination that the entry was illegal from its inception because the original entryman was not qualified will not afford a basis for cancellation of the entry where it is established that the assignee was unaware of his assignor's lack of qualifications and proceeded in good faith to develop the entry.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

CANCELLATION

Violation of the prohibition against holding an excess of 320 acres constitutes a failure to comply with the requirements of law and such entries are properly canceled.

Estoppel will not lie against the Government where there is no showing that the parties to illegal agreements relied in any way on the statements or acts of Government officials.

United States v. G. Patrick Morris, et al.,
19 IBLA 350 (Apr. 7, 1975) 82 I.D. 146

DESERT LAND ENTRY--Continued

CANCELLATION--Continued

Any desert land entry made for the use and benefit of others with intent to circumvent the provisions of the desert land laws must be regarded as fraudulent and will be canceled.

United States v. Golden Grigg, et al., 19 IBLA 379
(Apr. 7, 1975) 82 I.D. 123

Where an allowed desert land entry was assigned to a qualified individual and the assignment was duly approved, a subsequent determination that the entry was illegal from its inception because the original entryman was not qualified will not afford a basis for cancellation of the entry where it is established that the assignee was unaware of his assignor's lack of qualifications and proceeded in good faith to develop the entry.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

DISTRIBUTION SYSTEM

Neither the law nor the regulations prohibit the use of a portable aluminum pipe irrigation system in the reclamation of lands in a desert entry, nor is there any affirmative requirement that the irrigation system or specific components thereof be permanently installed on the entry.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

ENVIRONMENTAL QUALITY

GENERALLY

As a condition precedent to the issuance of an oil and gas lease, the Department of the Interior may require an applicant to accept a reasonable surface management stipulation for the protection of wildlife and watershed values.

Richard P. Cullen, 18 IBLA 414 (Feb. 10, 1975)

The execution of special stipulations as a condition precedent to issuance of oil and gas leases for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the final authority for oil and gas leasing on public domain land rests in this Department.

Earl R. Wilson, 21 IBLA 392 (Aug. 27, 1975)

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Bill J. Maddox, 22 IBLA 97 (Sept. 22, 1975)

EQUITABLE ADJUDICATION

GENERALLY

Where the claimant of a trade and manufacturing site who has substantially complied with the requirements of law and regulation makes a legitimate contract for the conditional sale of the business to another before filing his application for patent, equitable adjudication will be invoked to prevent an intervening land classification action from operating to destroy the interest of both the claimant and his buyer and defeating the purpose of the Act.

Paul M. Jovick, 19 IBLA 283 (Apr. 7, 1975)

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the result that the claimants were thereby induced to do so, to their ultimate damage.

United States v. A. E. Fleming, et al., 20 IBLA 83 (Apr. 24, 1975)

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

Equitable adjudication authority is not appropriate and may not be applied to permit filing of a homesite notice of location after the land has been withdrawn.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

Equitable adjudication is not appropriate where a headquarters site applicant has not substantially complied with the law.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

SUBSTANTIAL COMPLIANCE

Where the claimant of a trade and manufacturing site who has substantially complied with the requirements of law and regulation makes a legitimate contract for the conditional sale of the business to another before filing his application for patent, equitable adjudication will be invoked to prevent an intervening land classification action from operating to destroy the interest of both the claimant and his buyer and defeating the purpose of the Act.

Paul M. Jovick, 19 IBLA 283 (Apr. 7, 1975)

EVIDENCE

GENERALLY

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

Nonrepresentative mineral samples alone cannot prove the existence of valuable mineralization exposed within a vein. If, however, other evidence establishes such mineralization, the samples may be given some weight to support geological inferences of the value of a lode mining claim.

Where the preponderance of the evidence in a mining claim contest supports an Administrative Law Judge's dismissal of a contest complaint, that decision will not be disturbed upon appeal.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

An Administrative Law Judge has a duty to conduct a hearing in such a manner that all available relevant facts in a mining contest will be adduced. He should take special care to do so where a party is without counsel and there is confusion concerning the status of purported tendered evidence.

EVIDENCE--Continued

GENERALLY--Continued

Evidence submitted on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Where, prior to the rejection of her application, an applicant for a Native allotment was advised of findings which, unless rebutted, would result in the rejection of the application, and was afforded an extended period of time in which to submit additional evidence, evidence which is thereafter submitted for the first time on appeal from the rejection decision, without explanation of why it was not submitted when due, will not be favorably considered in adjudicating the propriety of the decision appealed from.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Mary Ayojiak, 22 IBLA 384 (Nov. 21, 1975)

An appeal before the Board on remand from the Court of Claims with instructions to admit evidence, previously excluded under the parol evidence rule, for the purpose of showing a pre-award agreement or an express or implied concession as to the rate of use of helicopter services, is denied where the record, augmented as the Court directed, shows that the Government did not change its method of contracting at appellant's request but rejected the proposal to include a guaranteed minimum daily rate of use and where an internal memorandum from appellant's president shows that he understood at the time of award that the contract could be flown at the rate of 5 hours per day rather than the rate of 7 hours per day alleged later when the contract proved unprofitable.

Appeal of Inter*Helo, Inc., IBCA-713-5-68 (Ct. Cl. No. 54-74) (Dec. 1, 1975) 82 I.D. 591

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

Where the preponderance of credible evidence indicates that the land applied for was not substantially used and occupied by the applicant, to the potential exclusion of others, for at least 5 years, the application is properly rejected.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

EVIDENCE--Continued

BURDEN OF PROOF

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

Where the Government has made a prima facie case of lack of discovery in a mining contest, any issue in doubt as to discovery raised by the evidence must be resolved against the party having the risk of nonpersuasion, the mining claimant. If a mining claimant fails to show by a preponderance of the evidence as to such issue that there has been a discovery of a valuable mineral deposit he has not satisfied his burden of proof and an Administrative Law Judge must declare the claim invalid, rather than leave the question of the claim's validity unresolved.

In making a prima facie case in a mining contest involving a common variety of material, it is only essential for the Government to establish that the contestees had not prior to July 23, 1955, met the criteria used in determining marketability at a profit. It is not essential that the Government's evidence prove conclusively that the material could not, in fact, be marketed at a profit, but only that it was not sold or marketed. The Government is not required to do the discovery work upon a mining claim; it is only necessary that the exposed areas of a claim and the workings on a claim be examined to verify if a discovery has been made by the mining claimant.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

A determination by a District Manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

The fact that much of the evidence that supports a mining claimant's position in a mining claim contest is presented by the Government, rather than the claimant, does not mean that the claimant's burden of proof has not been met, because the entire evidentiary record must be considered in weighing the evidence and not simply the claimant's evidence alone.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

In a mining contest a mining claimant is the true proponent under the Administrative Procedure Act, 5 U.S.C. § 556(d), of a rule or order that he has complied with the mining laws, and he has

VIDENCE--Continued

BURDEN OF PROOF--Continued

the ultimate burden of proof -- the risk of nonpersuasion -- to show by a preponderance of the evidence that there is a valuable mineral deposit on the claim, when the Government has made a prima facie case of lack of such a discovery.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

A protestant against the filing of a survey plat bears the burden of proof, i.e., the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant state has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the state under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, i.e., the risk of nonpersuasion, in the proceeding.

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the state's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

The successful drawee in a drawing under the special simultaneous filing procedure for noncompetitive oil and gas lease offers is automatically disqualified if he fails to pay rental within 15 days from receipt of notice that such payment is due. A statement by such a drawee that he did not receive a notice and that his office records where his oil and gas records are contained lack any copy of the rental notice is insufficient to overcome the presumptive effect of evidence that Bureau of Land Management officials mail copies of the notice of rental, a notice of stipulations to be signed, and the stipulations in the same envelope, and it is clear the envelope containing the stipulations was received at the drawee's office.

A. G. Golden, 22 IBLA 261 (Oct. 24, 1975)

CREDIBILITY

A conjectural opinion on the possibility of a mining claimant's ability to market a common variety of gravel at a profit prior to July 23, 1955, is not credible evidence of marketability where specific evidence tends to show that development of a mining operation at that time was not then warranted by the market place conditions.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

EVIDENCE--Continued

CREDIBILITY--Continued

Under the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970), where the record includes a statement as to a principal place of residence which conflicts with a more detailed statement made under oath by the same person, the matter may be remanded for hearing in order to resolve the conflict and protect the rights of a third party.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

EXCHANGES OF LAND
(See also Indian Lands, Wildlife Refuges and Projects)

FOREST EXCHANGES

An application for satisfaction of forest lieu selection rights filed after Dec. 31, 1969, will be rejected, as all such claims which had not been satisfied on that date, or for which no satisfaction had been demanded, expired by operation of law.

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney in fact of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

GENERALLY

In an underground coal mine owned and operated by two partners who are also the only miners in such mine, there being no employees, such owner-operators and the mine are, nevertheless, subject to the provisions of the Act, where the coal extracted from such mine enters commerce by being transported interstate.

Charles T. Sink, 5 IBMA 217 (Oct. 31, 1975)
82 I.D. 535

ADMINISTRATIVE PROCEDURE

Appeals

In the absence of a showing of good cause and the presence of objection by an opposing party, the Interior Board of Mine Operations Appeals will not grant an appellant leave to amend its brief on appeal so as to recast existing arguments or to raise new issues.

In the Matter of Old Ben Coal Company (No. 24 Mine), 5 IBMA 211 (Oct. 20, 1975) 82 I.D. 525

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

ADMINISTRATIVE PROCEDURE--Continued

Dismissals

Where it does not appear from the pleadings that the party charged by the Mining Enforcement and Safety Administration is a proper party to a penalty proceeding, the action is properly dismissed.

Ohio Mining Company, 4 IBMA 121 (Apr. 17, 1975) 82 I.D. 167

Parties

Where an operator filed legal identity reports under two different corporate names without noting the change, and where, in a proceeding to assess a civil penalty, the notices of violation and the petition for assessment use only one of the names, there is no basis for dismissal for failure to serve and join the corporate alias if the respondent in fact has defended throughout the administrative proceeding.

Harlan No. 4 Coal Company, 4 IBMA 241 (June 6, 1975) 82 I.D. 284

Rulemaking

The "approval" function of the Secretary with respect to roof control plans, exercised at the enforcement level by a MESA District Manager under 30 CFR 75.200-4, is not subject to the rulemaking provisions of secs. 101 and 301(d) of the Act. 30 U.S.C. §§ 811, 861(d) (1970).

Bishop Coal Company, 5 IBMA 231 (Nov. 18, 1975) 82 I.D. 553

APPLICATIONS FOR REVIEW

Generally

An Administrative Law Judge is limited to deciding those issues actually presented in an Application for Review and is not authorized to raise any other substantive question sua sponte unless it pertains to jurisdiction.

Eastern Associated Coal Corporation, 4 IBMA 1 (Jan. 23, 1975) 82 I.D. 22

BURDEN OF PROOF

The Secretary's burden of proof regulation, 43 CFR 4.587, does not govern the order of proof or the obligation to establish a prima facie case. Such regulation applies only to the determination of which party loses in whole or in part, as appropriate, where the evidence is in equipoise with respect to an element or elements of proof in dispute.

Zeigler Coal Company, 4 IBMA 88 (Mar. 31, 1975) 82 I.D. 111

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

CLOSURE ORDERS

Generally

An Order of Withdrawal will be vacated where it is served upon a person who is neither responsible for the violation or condition alleged nor for the safety of the miners involved.

United States Steel Corporation, 4 IBMA 175 (May 19, 1975) 82 I.D. 246

Vacation or termination of a sec. 104(a) order of withdrawal by MESA does not preclude review of such order where timely application therefor is made pursuant to sec. 105 of the Act.

Eastern Associated Coal Corporation, 4 IBMA 298 (June 27, 1975) 82 I.D. 311

Imminent Danger

Extensive accumulations of loose coal, coal dust, and float coal dust in the presence of potential sources of ignition will support a finding of imminent danger.

Old Ben Coal Company, 4 IBMA 198 (June 6, 1975) 82 I.D. 264

Extensive accumulations of loose coal and coal dust in the presence of a damaged trailing cable will support a finding of imminent danger.

Old Ben Coal Company, 4 IBMA 224 (June 6, 1975) 82 I.D. 277

In an application for review of a sec. 104(a) order, the order is properly vacated where the conditions cited therein constitute violations of the operator's roof control plan, but fail to show the roof to be unsafe or inadequately supported.

Zeigler Coal Company, 5 IBMA 132 (Sept. 19, 1975) 82 I.D. 441

ENTITLEMENT OF MINERS

Compensation

Generally

A claim for compensation under sec. 110(a) at the rate allowable for withdrawal orders issued for an unwarrantable failure to comply with a mandatory standard is not sustainable where such claim is predicated upon an imminent danger withdrawal order issued under sec. 104(a) of the Act.

Billy F. Hatfield, et al. v. Southern Ohio Coal Company, 4 IBMA 259 (June 25, 1975) 82 I.D. 289

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

ENTITLEMENT OF MINERS--Continued

Compensation--Continued

Generally--Continued

A shift for the purposes of sec. 110(a) of the Act begins at that time when payment begins and terminates when payment terminates. If a sec. 104(a) or 104(b) order of withdrawal is issued between shifts and it has not been terminated, the miners idled thereby in the following shift are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than 4 hours of such shift.

Island Creek Coal Company, 5 IBMA 276 (Dec. 3, 1975)
82 I.D. 598

Dismissal

An application for compensation filed under sec. 110(a) of the Act may not be dismissed pursuant to motion in the prehearing stage if it states any claim upon which relief may be granted.

Billy F. Hatfield, et al. v. Southern Ohio Coal Company, 4 IBMA 259 (June 25, 1975)
82 I.D. 289

EVIDENCE

Preponderance

Where the only evidence offered to prove a violation of 30 CFR 75.507 was the credible opinion of the inspector which was offset by the credible opinion of the operator's witness of equal expertise, the Board will not overturn the Administrative Law Judge's determination that the fact of violation was not established by a preponderance of the evidence. 43 CFR 4.587. Zeigler Coal Company, 4 IBMA 88, 82 I.D. 111, 1974-1975 OSHD par. 19,478 (1975).

Rushton Mining Company, 5 IBMA 170 (Sept. 26, 1975)
82 I.D. 457

Prima Facie Case

Withdrawal orders and assessments of civil penalties are "sanctions" within the meaning of sec. 7(d) of the Administrative Procedure Act, 5 U.S.C. § 556(d) (1970) and may be imposed only if the government produces reliable, probative, and substantial evidence, that is to say, establishes a prima facie case.

Zeigler Coal Company, 4 IBMA 88 (Mar. 31, 1975)
82 I.D. 111

Sufficiency

Where the evidence fails to show the composition of an accumulation of materials to be loose coal, coal dust, or other combustible matter and does show that the accumulated materials

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

EVIDENCE--Continued

Sufficiency--Continued

were soft and ranged from damp to wet, there is no basis upon which to conclude that a violation of 30 U.S.C. § 864(a) has occurred.

Bishop Coal Company, 4 IBMA 52 (Mar. 14, 1975)
82 I.D. 89

A violation of sec. 304(a) of the Act is not established where neither the notice, order, nor the evidence at hearing shows the nature and extent of the accumulation of loose coal, coal dust or float coal dust.

Itmann Coal Company, 4 IBMA 61 (Mar. 18, 1975)
82 I.D. 96

HEARINGS

Generally

It is error for an Administrative Law Judge to render a decision on the merits in a review proceeding where a hearing on the merits is neither held nor waived by the parties.

Perry-Ross Coal Company, 5 IBMA 5 (July 25, 1975)
82 I.D. 349

Admissibility of Evidence

The precedent Notice and Orders underlying a sec. 104(c)(2) Order of Withdrawal are admissible in evidence to establish their existence in the sec. 104(c) chain as part of prima facie case.

Kentland-Elkhorn Coal Corporation, 4 IBMA 166
(May 14, 1975) 82 I.D. 234

Burden of Proof

Where MESA, in a review proceeding of a sec. 104(c)(2) Order of Withdrawal, fails to establish a prima facie case that the Order was validly issued pursuant to sec. 104(c) of the Act, the operator has no burden to present rebuttal evidence and is entitled to the relief requested.

Kentland-Elkhorn Coal Corporation, 4 IBMA 166
(May 14, 1975) 82 I.D. 234

Motions

The denial of a motion for a continuance will not be disturbed on appeal, unless it appears that the denial was an abuse of the trial Judge's discretion and resulted in specific prejudice.

Zeigler Coal Company, 4 IBMA 30 (Jan. 28, 1975)
82 I.D. 36

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

HEARINGS--Continued

Notice and Service

An operator must be given fair notice adequate to enable it to determine with reasonable certainty the type and number of violations charged by MESA as the basis for assessment of penalties.

Old Ben Coal Company, 4 IBMA 198 (June 6, 1975)
82 I.D. 264

An operator must be given fair notice adequate to enable it to determine with reasonable certainty the type and number of violations alleged by MESA as the basis for assessment of penalties.

Old Ben Coal Company, 4 IBMA 224 (June 6, 1975)
82 I.D. 277

An operator must be given adequate notice of the charge in a civil penalty proceeding brought under sec. 109 of the Act. 30 U.S.C. § 819 (1970). Failure by an operator to object to lack of due notice below, if the opportunity arises, results in a waiver of a claim of error based thereon.

Eastern Associated Coal Corporation, 5 IBMA 185
(Sept. 30, 1975) 82 I.D. 506

Powers of Administrative Law Judges

Where an operator is held in default an Administrative Law Judge errs in dismissing the proceeding for assessment of civil penalties without making a determination on the merits that no violation of the Act has occurred.

Ardee Coal Company, 4 IBMA 112 (Apr. 16, 1975)
82 I.D. 163

An Administrative Law Judge is required by 5 U.S.C. § 556 to conduct a hearing in a strictly impartial manner, not as a representative of an investigative or prosecuting authority.

Old Ben Coal Company, 4 IBMA 224 (June 6, 1975)
82 I.D. 277

An Administrative Law Judge exceeds his authority in ordering MESA to cease and desist issuance of sec. 104(a) orders of withdrawal.

Eastern Associated Coal Corporation, 4 IBMA 298
(June 27, 1975) 82 I.D. 311

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

IMMINENT DANGER

Generally

An Administrative Law Judge errs in construing sec. 104(a) of the Act to grant the Secretary discretion to issue a mandatory order directing an operator to perform any action other than to withdraw persons from an area of a coal mine affected by an imminent danger.

Eastern Associated Coal Corporation, 4 IBMA 1
(Jan. 23, 1975) 82 I.D. 22

Proximate Peril

A proximate peril to life and limb constituting an imminent danger does not exist where the potential for a disaster is so remote and speculative that a reasonable man would estimate that such disaster would not occur prior to abatement if normal operations to extract coal continued.

Rochester & Pittsburgh Coal Company, 5 IBMA 51
(July 31, 1975) 82 I.D. 368

MANDATORY SAFETY STANDARDS

Electric Equipment

The provisions of 30 CFR 75.512 require, inter alia, that all electric equipment be maintained in a manner to assure safe operating conditions, and the failure to properly guard drive chains on electrically operated loading machines constitutes a violation of such mandatory safety standard.

Bell Coal Company, Inc., 5 IBMA 155 (Sept. 23, 1975)
82 I.D. 450

Incombustible Contents

Where an Administrative Law Judge finds that the methods for testing incombustible content of samples are reliable, results obtained by such methods indicating insufficient incombustible content will support a finding of violation of 30 CFR 75.403.

Old Ben Coal Company, 4 IBMA 198 (June 6, 1975)
82 I.D. 264

Maintenance of Electric Equipment

Proof of defective brakes on a roof bolt machine and of a missing guard on a belt chain drive constitutes prima facie evidence of a failure to maintain electric equipment "properly." 30 CFR 75.512.

Eastern Associated Coal Corporation, 5 IBMA 185
(Sept. 30, 1975) 82 I.D. 506

MANDATORY SAFETY STANDARDS--Continued

Methane Tests

Section 303(h)(1) of the Act and its counterpart, 30 CFR 75.307, pertain only to methane tests at working places where electric equipment is operated or about to be operated. It is improper to cite an operator for violation of this standard when an operator fails to make methane tests at a working place where electrically operated equipment is neither present nor about to be operated.

United States Steel Corporation, 5 IBMA 293 (Dec. 12, 1975) 82 I.D. 602

Permissibility

Generally

Once a permissibility specification becomes effective, machinery already or subsequently equipped with a part covered thereby cannot be maintained in permissible condition unless that part is kept in operational status.

Eastern Associated Coal Corporation, 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Brakes on Electric Face Equipment

The failure to maintain the brakes on an off-standard shuttle car in operational condition is a violation of the operator's obligation under 30 CFR 75.503 to maintain electric face equipment in permissible condition. 30 CFR 18.20(f).

Eastern Associated Coal Corporation, 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Schedule 2 G

Schedule 2 G, codified at 30 CFR Part 18, was effectively republished in accordance with sec. 101(j) of the Act, 30 U.S.C. § 811(j) (1970), at 35 FR 17890 (Nov. 20, 1970), where it was incorporated under 30 CFR 75.506.

Eastern Associated Coal Corporation, 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Switches on Electric Face Equipment

The failure to maintain the reset mechanism on electric face equipment switches in operational condition is a violation of an operator's obligation under 30 CFR 75.505 to maintain electric face equipment in permissible condition. 30 U.S.C. § 878(i) (1970), 30 CFR 75.520.

Eastern Associated Coal Corporation, 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

MANDATORY SAFETY STANDARDS--Continued

Recording Examinations

The results of examinations of emergency escapeways and facilities and for smokers' articles must be recorded weekly pursuant to 30 CFR 75.1801 as read in conjunction with 30 CFR 75.1702 and 30 CFR 75.1704.

Leckie Smokeless Coal Company, 5 IBMA 12 (July 29, 1975) 82 I.D. 353

Monthly examinations of circuit breakers and their auxiliary devices protecting high voltage circuits must be recorded monthly pursuant to 30 CFR 75.800-4 as read in conjunction with § 75.800-3 and § 75.1806.

Leckie Smokeless Coal Company, 5 IBMA 65 (Aug. 7, 1975) 82 I.D. 375

Roof Control

Under section 302(a) of the Act, the failure to prevent a person from proceeding beyond the last permanent roof support into an area lacking in the adequate temporary support required by the existing roof control plan constitutes a single violation. 30 U.S.C. § 862(a) (1970), 30 CFR 75.200.

Eastern Associated Coal Corporation, 4 IBMA 184 (May 23, 1975) 82 I.D. 250

Individual provisions of a roof control plan, once adopted and approved by the Secretary are enforceable as mandatory standards as to the particular mine for which the plan was approved.

Zeigler Coal Company, 5 IBMA 132 (Sept. 19, 1975) 82 I.D. 441

Roof Control Plans

An operator cannot be cited for a violation of a revision of a purported approved roof control plan unless such revision is first adopted by such operator. 30 U.S.C. § 862(a) (1970). 30 CFR 75.200, 75.200-2.

Bishop Coal Company, 5 IBMA 231 (Nov. 18, 1975) 82 I.D. 553

Ventilation Plan

Evidence of failure by an operator to adhere to its approved ventilation plan will support the issuance of a notice and order under sec. 104(b) of the Act.

Zeigler Coal Company, 4 IBMA 30 (Jan. 28, 1975) 82 I.D. 36

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MINES SUBJECT TO THE ACT

In an underground coal mine owned and operated by two partners who are also the only miners in such mine, there being no employees, such owner-operators and the mine are, nevertheless, subject to the provisions of the Act, where the coal extracted from such mine enters commerce by being transported interstate.

Charles T. Sink, 5 IBMA 217 (Oct. 31, 1975)
82 I.D. 535

MODIFICATION OF APPLICATION OF MANDATORY HEALTH STANDARDS

Jurisdiction

Section 301(c) of the Federal Coal Mine Health and Safety Act of 1969 does not authorize modification of the application of mandatory health standards. (Sec. 301(c) and 43 CFR 4.500.)

Kanawha Coal Company, 5 IBMA 299 (Dec. 12, 1975)
82 I.D. 605

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS

Generally

A petition for Modification of the Application of a Mandatory Safety Standard will not be granted where petitioner alleges but does not establish that in all respects and at all times the modification sought will be as safe as, or safer than, the mandatory safety standard.

Kentland-Elkhorn Coal Corporation, Eastern Coal Corporation, 4 IBMA 130 (Apr. 30, 1975)
82 I.D. 195

An operator's Petition for Modification of the application of a mandatory safety standard will be denied where it fails to establish that the proposed alternative method will at all times guarantee no less than the same measure of safety protection to the miners as the mandatory standard.

Eastern Associated Coal Corporation, 4 IBMA 273 (June 26, 1975)
82 I.D. 295

Diminution of Safety

Where an operator presents prima facie evidence in a sec. 301(c) proceeding proving that the application of a mandatory standard to a particular mine will result in a diminution of safety to the miners in such mine in the form of greatly increased prospects of roof fall, and its case prevails by a preponderance of the evidence over that presented by opposing parties, the modification may be granted.

Cannelton Industries, Inc., 4 IBMA 74 (Mar. 21, 1975)
82 I.D. 102

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS--Continued

Publication

Pursuant to subsection (c) of sec. 301, notice of receipt of a petition for modification must be published in the Federal Register, but such publication requirement does not apply to issuance of an adjudicative decision.

Cannelton Industries, Inc., 4 IBMA 74 (Mar. 21, 1975)
82 I.D. 102

Roof Control Plans

The Secretary's authority to approve or disapprove roof control plans and revisions thereof under sec. 302(a) of the Act has been delegated exclusively to MESA, and such plans are not subject to modification by way of petitions to modify the application of a mandatory standard filed pursuant to sec. 301(c) of the Act.

In the Matter of Affinity Mining Company (Petitioner) v. Mining Enforcement and Safety Administration (Respondent), United Mine Workers of America (Respondent), 5 IBMA 36 (July 31, 1975)
82 I.D. 362

NOTICES OF VIOLATION

Party to be Charged

Where trucks owned by a haulage contractor operate without backup alarms on coal mine property in violation of 30 CFR 77.410, and thus endanger the miners employed by the principal coal mine operator, the proper party to be charged in the resulting notice of violation is the principal coal mine operator, since it has the direct responsibility to assure the health and safety of such miners.

Peggs Run Coal Company, Inc., 5 IBMA 175
(Sept. 30, 1975)
82 I.D. 516

An owner-operator of a coal mine, rather than the independent contractor, was properly charged with a violation where its employees were endangered by the violation and it could have removed the hazard with a minimum of effort. Sec. 3(d) of the Act. 30 U.S.C. § 802(d).

West Freedom Mining Corporation, Black Fox Mining and Development Corporation, AH-RS Coal Corporation, Perry-Rosa Coal Company, 5 IBMA 329 (Dec. 17, 1975)
82 I.D. 618

Sufficiency

Where neither an order nor modification thereof describes a condition or practice constituting an alleged violation of a mandatory safety or health standard as required by sec. 104(e) of the Act, an Administrative Law Judge is correct in vacating any proposed penalty assessment based on such inadequate notice. 30 U.S.C. § 814(e) (1970).

Ashland Mining and Development Company, Inc., 5 IBMA
(Nov. 19, 1975)
82 I.D. 578

PARTIES

Failure to Answer

Under 43 CFR 4.507, a "statutory party" who fails to file an initial responsive pleading loses its status as a party and is subject to dismissal.

Old Ben Coal Company, 5 IBMA 19 (July 30, 1975) 82 I.D. 355

Failure to Participate

Where a party to an application for review proceeding under sec. 105 of the Act deliberately and persistently fails to participate in such proceeding before the Administrative Law Judge, it may be dismissed as a party within the discretion of the Judge or the Interior Board of Mine Operations Appeals. 30 U.S.C. § 815 (1970).

In the Matter of Old Ben Coal Corporation (No. 24 Mine), 4 IBMA 104 (Apr. 10, 1975) 82 I.D. 160

The Interior Board of Mine Operations Appeals will not overturn an Administrative Law Judge's dismissal of a party in a review proceeding for deliberate and persistent failure to participate where no abuse of discretion has been shown.

Old Ben Coal Company, 5 IBMA 19 (July 30, 1975) 82 I.D. 355

The obligation of a representative of miners to file a responsive pleading under 43 CFR 4.507(c), in order to thereafter participate in the proceeding, arises after the operator has perfected service of the applicatfon for review upon such representative.

In the Matter of Alabama By-Products Corporation (Maxine Mine), 5 IBMA 100 (Aug. 25, 1975) 82 I.D. 409

PENALTIES

Admissibility of Previous Violations

Only those violations charged prior to those in issue, and for which penalties have been paid, settled by compromise, or finally ordered to be paid by the Department, are admissible as evidence in considering an operator's history of previous violations.

Peggs Run Coal Company, Inc., 5 IBMA 144 (Sept. 22, 1975) 82 I.D. 445

Amounts

In a sec. 109 de novo proceeding, an Administrative Law Judge may determine an amount of civil penalty for violations charged and found to have occurred higher than that proposed by the MESA

PENALTIES--Continued

Amounts--Continued

Assessment Office for such violations where such determination is based upon consideration of the statutory criteria and findings which justify his assessments.

Old Ben Coal Company, 4 IBMA 198 (June 6, 1975) 82 I.D. 264

Old Ben Coal Company, 4 IBMA 224 (June 6, 1975) 82 I.D. 277

Criteria

Official Notice

Where an Administrative Law Judge bases ultimate findings of fact upon officially noticed facts and leaves the record open for submission of rebuttal, the failure to take advantage of such opportunity for rebuttal results in waiver of objections.

Eastern Associated Coal Corporation, 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Existence of Violation

Generally

A violation of 30 CFR 75.517 is established where it is shown that the outer protective insulating jacket of a trailing cable is cut through to the extent that the inner phase lead insulation is exposed.

Old Ben Coal Company, 4 IBMA 224 (June 6, 1975) 82 I.D. 277

Mitigation

The amounts assessed as civil penalties will not be disturbed where it appears that an Administrative Law Judge has given weight to evidence of economic losses suffered as a result of a vacated withdrawal order.

Zeigler Coal Company, 5 IBMA 132 (Sept. 19, 1975) 82 I.D. 441

Economic losses suffered by an operator as a result of a vacated withdrawal order need not be considered as a mitigating factor in a penalty proceeding arising out of a condition or practice cited in such order where such losses are not affirmatively pleaded at or before the hearing. Sec. 109(a) of the Act. 30 U.S.C. § 819(a).

Zeigler Coal Company, 5 IBMA 338 (Dec. 17, 1975) 82 I.D. 622

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Mitigation--Continued

Where a withdrawal order is found to be validly issued, economic loss due to such order is properly excluded from consideration as a mitigating factor in determining a penalty assessment pursuant to sec. 109(a) of the Act.

Zeigler Coal Company, 5 IBMA 356 (Dec. 19, 1975) 82 I.D. 636

RESPIRATORY DUST PROGRAM

Generally

An operator may challenge whether scientific procedures set forth in the regulations were being complied with in a given case, but may not raise issues regarding their scientific reliability in an administrative proceeding inasmuch as such issues would pertain to the validity of the Secretary's regulations, a matter beyond the authority of the Board.

Eastern Associated Coal Corporation, 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

Sufficiency of Evidence

Under 30 CFR 70.220(a)(3), 35 FR 5544 (Apr. 3, 1970), MESA must prove the existence of an underlying notice of violation of 30 CFR 70.100(a) or (c) if the existence of such notice is in issue.

Eastern Associated Coal Corporation, 5 IBMA 185 (Sept. 30, 1975) 82 I.D. 506

REVIEW OF NOTICES AND ORDERS

Generally

The validity of the precedent Notice and Orders is not in issue in a proceeding for review of an Order of Withdrawal issued pursuant to sec. 104(c)(2) of the Act.

Kentland-Elkhorn Coal Corporation, 4 IBMA 166 (May 14, 1975) 82 I.D. 234

The validity of the precedent notice and order is not in issue in a proceeding for review of an Order of Withdrawal issued pursuant to sec. 104(c)(2) of the Act.

Zeigler Coal Company, 5 IBMA 346 (Dec. 18, 1975) 82 I.D. 632

REVIEW OF NOTICES AND ORDERS--Continued

Delegation

The Secretary has delegated his jurisdiction to review orders issued pursuant to sec. 103 of the Act to the Office of Hearings and Appeals for decision, initially by the Administrative Law Judges, and ultimately by the Interior Board of Mine Operations Appeals.

Eastern Associated Coal Corporation, 5 IBMA 74 (Aug. 15, 1975) 82 I.D. 392

Dismissal of Applications

Failure of the Applicant for Review to attend a prehearing conference after receiving notice of its scheduling is ground for dismissal of the Application.

Perry-Ross Coal Company, 5 IBMA 5 (July 25, 1975) 82 I.D. 349

An Application for Review of a Notice modifying an earlier Notice of Violation issued pursuant to sec. 104(b) of the Act should be dismissed where the condition cited in the earlier Notice has been fully abated and a Notice of Termination issued.

Affinity Mining Company, 5 IBMA 126 (Sept. 15, 1975) 82 I.D. 439

Jurisdiction

The Secretary has both the jurisdiction and the obligation, upon appropriate application therefor, to review an order issued pursuant to sec. 103 of the Act.

Eastern Associated Coal Corporation, 5 IBMA 74 (Aug. 15, 1975) 82 I.D. 392

The Secretary of the Interior has jurisdiction to assess a civil penalty under sec. 109(c) of the Act, 30 U.S.C. § 819(c) (1970), and such penalty is not criminal in nature.

In the Matter of Daniel Hensler, 5 IBMA 115 (Sept. 12, 1975) 82 I.D. 434

Notice and Service

Pursuant to sec. 105(a) of the Act, 30 U.S.C. § 815(a) (1970), and 30 CFR 81.5, an operator is obliged to serve an application for review on the appropriate representative of miners at the address listed in the valid, existing certificate of representation.

In the Matter of Alabama By-Products Corporation (Maxine Mine), 5 IBMA 100 (Aug. 25, 1975) 82 I.D. 409

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

REVIEW OF NOTICES AND ORDERS--Continued

Scope of Review

Where an Administrative Law Judge erroneously finds the evidence of record to be in equipoise with respect to all disputed elements of proof, the Interior Board of Mine Operations Appeals may make its own findings from the record determining the preponderant weight of the evidence. 43 CFR 4.605.

Zeigler Coal Company, 4 IBMA 88 (Mar. 31, 1975) 82 I.D. 111

SECRETARIAL ORDERS

Generally

An order signed by the Secretary which establishes enforcement policy is binding throughout the Department, and its validity is neither procedurally nor substantively subject to challenge at the administrative level.

Republic Steel Corporation, 5 IBMA 306 (Dec. 16, 1975) 82 I.D. 607

UNAVAILABILITY OF EQUIPMENT, MATERIALS, OR QUALIFIED TECHNICIANS

Generally

A violation of a mandatory health or safety standard is not established where compliance is impossible due to the unavailability of equipment, materials, or qualified technicians.

Itmann Coal Company, 4 IBMA 61 (Mar. 18, 1975) 82 I.D. 96

Sufficiency

The fact that equipment required to abate a condition is on order, standing alone, will not support a conclusion of unavailability of that equipment.

Robbins Coal Company, 5 IBMA 268 (Nov. 20, 1975) 82 I.D. 581

UNWARRANTABLE FAILURE

Notices of Violation

Under sec. 105(a) of the Act, 30 U.S.C. § 815(a) (1970), an operator may file an application for review of a sec. 104(b) notice of violation with 104(c)(1) findings only if it wishes to challenge the reasonableness of time fixed for abatement. Subsequent to abatement, review of such notice under sec. 105(a) may be obtained only as an incident to the review of a related sec 104(c)(1) withdrawal order.

Zeigler Coal Company (On Reconsideration), 4 IBMA 139 (May 13, 1975) 82 I.D. 221

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

UNWARRANTABLE FAILURE--Continued

Notices of Violation--Continued

A notice of violation issued pursuant to sec. 104(c)(1) of the Act may not be challenged directly, by itself, in an Application for Review under sec. 105 of the Act where the violation cited therein has been abated.

Eastern Associated Coal Corporation, 4 IBMA 184 (May 23, 1975) 82 I.D. 250

Withdrawal Orders

Generally

An Application for Review of a sec. 104(c)(2) withdrawal order is properly denied where the evidence shows that a violation occurred, that the condition or practice cited posed a probable risk of serious bodily harm or death, but short of imminent danger, and also, that the operator demonstrated a reckless disregard for the health and safety of the miners.

Zeigler Coal Company, 5 IBMA 346 (Dec. 18, 1975) 82 I.D. 632

Imminent Danger

Conditions or practices specified in an order should be considered collectively for the purpose of determining imminent danger. 30 U.S.C. § 814 (1970).

Zeigler Coal Company, 5 IBMA 356 (Dec. 19, 1975) 82 I.D. 636

FEDERAL EMPLOYEES AND OFFICERS

GENERALLY

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to save an oil and gas lessee from the possible consequences of his own negligence.

Richard V. Bowman, 19 IBLA 261 (Mar. 31, 1975)

AUTHORITY TO BIND GOVERNMENT

A contiguous landowner loses his preference right to purchase land offered at public sale when he fails to submit his preference right bid within the 30-day period provided by regulation; the Government's failure to return the check which accompanied his unsuccessful bid during this period, and his reliance on assurances it had been returned, do not excuse noncompliance with the preference right regulation, 43 CFR 2711.4(b)(1).

Basil R. Twist, 19 IBLA 75 (Feb. 26, 1975)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to save an oil and gas lessee from the possible consequences of his own negligence.

Richard V. Bowman, 19 IBLA 261 (Mar. 31, 1975)

The authority of the Government to proceed with the determination of the validity of a mining claim is not barred by laches, because Government property is not to be disposed of contrary to law, despite any acquiescence, laches, or failure to act on the part of its officer or agents.

Montana Copper King Mining Co., et al., 20 IBLA 30 (Apr. 16, 1975)

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

Rights not authorized by law cannot be acquired through reliance on erroneous information given by employees of the Bureau of Land Management.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

Generally, the Government is not estopped from demanding oil and gas lease royalty payments it is owed, even if its employees may have made prior mistakes in accepting or computing the royalty.

Gulf Oil Corp., et al., 21 IBLA 1 (June 16, 1975)

Advice or information received over the telephone from personnel of the Bureau of Land Management does not constitute a "bill or decision rendered by" the Department under 30 U.S.C. § 188(b) (1970).

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975)
82 I.D. 386

Reliance upon erroneous or incomplete information provided by Bureau of Land Management employees cannot create any rights not authorized by law.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Margaret Hughey Lugus, 22 IBLA 146 (Sept. 30, 1975)

FEDERAL EMPLOYEES AND OFFICERS--Continued

INTEREST IN LANDS

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Janson (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT
(See also Surplus Property)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Paradox Oil and Gas Company, 22 IBLA 242 (Oct. 22, 1975)

FEES
(See also Accounts)

The Bureau of Land Management, in the exercise of its discretionary power to issue special land use permits, may establish special fee assessments for off-road vehicle (ORV) events.

The filing of an application for a special land use permit does not vest in the applicant any rights which preclude the Bureau of Land Management from requiring compliance with fee assessments adopted after the date of such filing but before issuance of the permit. In the absence of a provision that pending applications are to be exempted from the effects of the change in fee requirements, the applicant must comply with the fee assessment in effect at the time of the issuance of the special land use permit.

An applicant's special land use permit application does not fall within the "firm commitment" exception of a Bureau of Land Management instruction memorandum requiring revised fee assessments for off-road vehicle (ORV) permits where,

FEES--Continued

subsequent to issuance and notice of the memorandum, the application is still in the preliminary processing stage requiring additional pre-event meetings, the applicant's acceptance of special stipulations, and further staff investigation and review before approval; however, the case will be remanded for further consideration where the District Office decision does not determine whether the application falls within the memorandum exception which permits the honoring of "negotiations which have progressed too far to negate * * *."

Walt's Racing Association, 18 IBLA 359 (Jan. 30, 1975)

Where notice of proposed rulemaking to change certain filing fees and to impose other charges has been published in the Federal Register, but no final rules have been published, the old schedule of fees will remain in effect until such time as the new rules are finally adopted, published and made effective.

Arizona Public Service Company, 20 IBLA 120 (Apr. 25, 1975)

An applicant's special land use permit application does not fall within a Bureau of Land Management instruction memorandum exception which permits the honoring of past "negotiations which have progressed too far to negate," in lieu of the new revised fee assessment required by the memorandum for off-road vehicle events, where at the time of issuance and notice of the memorandum only preliminary negotiations had occurred which could still be negated.

Walt's Racing Association, 22 IBLA 238 (Oct. 22, 1975)

GEOLOGICAL SURVEY

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (Feb. 7, 1975) 82 I.D. 60

Delta Funds, Inc., 19 IBLA 185 (Mar. 18, 1975)

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, the authority has been delegated by the Secretary of the Interior

GEOLOGICAL SURVEY--Continued

to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

An Oil and Gas Supervisor of the Geological Survey has authority to demand prejudgment interest based upon the failure of an oil and gas lessee to pay timely royalties owed to the Government, despite the fact that the Supervisor is an employee of the Executive Branch.

Where an oil and gas lessee appeals from a decision of an Oil and Gas Supervisor's determination that additional royalties are due to the Government, and simultaneously files a request for suspension of the ruling, which is granted by the Geological Survey "until further notice," prejudgment interest continues to accrue during the period of the suspension. This conclusion is premised on the doctrine that interest is compensation for delay in payment.

A demand by the Geological Survey for prejudgment interest for delayed payment of additional royalties owed to the Government is not necessarily unenforceable in the courts because it was not asserted as a counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure.

Atlantic Richfield Company, 21 IBLA 98 (June 30, 1975) 82 I.D. 316

GEOTHERMAL LEASES

GENERALLY

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Austral Oil Company, Inc., 21 IBLA 243 (Aug. 11, 1975)

ACREAGE LIMITATIONS

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Robert G. Lynn, 19 IBLA 167 (Mar. 17, 1975)

GEOTHERMAL LEASES--Continued

APPLICATIONS

Generally

An application for a lease of geothermal resources within a riverbed not under jurisdiction of the United States is properly rejected.

Milan S. Papulak, 19 IBLA 139 (Mar. 7, 1975)

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications, or a reference by serial number to a record in which such statement previously had been filed.

E & H Investments, Inc., 19 IBLA 141 (Mar. 7, 1975)

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Lands within a known geothermal resources area (KCRA) are not available for noncompetitive leasing. Where lands included in a geothermal lease application are determined to be within a KCRA, and such determination is made after the filing of the application but before the issuance of a lease, or amendment thereto, pursuant to such application, the application must be rejected as to such lands.

Robert C. Lynn, 19 IBLA 167 (Mar. 17, 1975)

Where the applicant for a noncompetitive lease of geothermal resources is not the sole party in interest and the application is not accompanied by separate statements signed by each of the interested parties, setting forth the nature of the agreement between them and their qualifications to hold such interests in geothermal resources leases, the application must be rejected.

California Geothermal, Inc., 19 IBLA 268 (Apr. 7, 1975)

An application for a noncompetitive geothermal lease must be rejected with respect to land described in the application which, although not within a known geothermal resources area (KCRA) at the time the application is filed, is designated as being within a KCRA before a lease is issued for said land.

Baumgartner Companies, 21 IBLA 133 (July 14, 1975)

A noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. If it describes less, the application is properly rejected as to such section.

Austral Oil Company, Inc., 21 IBLA 243 (Aug. 11, 1975)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A noncompetitive geothermal resources lease application must include all available land within a surveyed or protracted section. If it fails to include a metes and bounds description of a nonnavigable riverbed within the section, the application is properly rejected as to the whole of the section.

Charles J. Heringer, 21 IBLA 254 (Aug. 11, 1975)

Where a noncompetitive geothermal resources lease application indicates that the applicant is not the sole party in interest and is not accompanied by the information required by 43 CFR 3202.2-5 with respect to the nature of the agreement between the parties in interest and their qualifications, the offer must be rejected even if the applicant is, in fact, contrary to the information disclosed on the lease application, the sole party in interest, where such fact is unknown to the BLM.

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications or a reference by serial number to a record in which such statement previously had been filed.

Central Nevada Corporation, 21 IBLA 308 (Aug. 14, 1975)

Until a final authoritative judicial determination is made of the title to geothermal resources in lands patented with a reservation of all minerals to the United States, a geothermal lease application which omits such patented lands from a section will not be considered in compliance with 43 CFR 3210.2-1(c) requiring all available lands in a section to be described in the lease application. However, the application may be suspended as to that section, rather than rejected, until the title question is resolved.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

Amendments

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

Edward B. Towne, 21 IBLA 304 (Aug. 14, 1975)

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in such an application received after

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Amendments--Continued

the close of the monthly filing period in which the initial application was filed will not be allowed.

Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

Description

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

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Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

COMPETITIVE LEASES

Section 4 of Geothermal Steam Act of 1970 authorizes competitive bidding as sole basis for issuance of geothermal leases for lands determined to be within a KGRA.

Section 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during Jan. 1974 filing period, and State Office rejections of appellant's Jan. 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 18 IBLA 393 (Feb. 7, 1975) 82 I.D. 60

Section 4 of Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed.

GEOTHERMAL LEASES--Continued

COMPETITIVE LEASES--Continued

Competitive bidding requirements of first sentence of sec. 4 of Geothermal Steam Act of 1970 apply to those applications filed during January 1974 filing period, and State Office rejections of appellant's January 1974 noncompetitive lease applications are proper under 43 CFR 3210.4.

Hydrothermal Energy and Minerals, Inc., 19 IBLA 136 (Mar. 6, 1975)

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a KGRA.

Charles J. Heringer, 21 IBLA 254 (Aug. 11, 1975)

DESCRIPTION OF LAND

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

Edward B. Towne, 21 IBLA 304 (Aug. 14, 1975)

FIRST QUALIFIED APPLICANT

Where a noncompetitive geothermal resources lease application indicates that the applicant is not the sole party in interest and is not accompanied by the information required by 43 CFR 3202.2-5 with respect to the nature of the agreement between the parties in interest and their qualifications, the offer must be rejected even if the applicant is, in fact, contrary to the information disclosed on the lease application, the sole party in interest, where such fact is unknown to the BLM.

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications or a reference by serial number to a record in which such statement previously had been filed.

Central Nevada Corporation, 21 IBLA 308 (Aug. 14, 1975)

KNOWN GEOTHERMAL RESOURCES AREA

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

GEOTHERMAL LEASES--Continued

KNOWN GEOTHERMAL RESOURCES AREA--Continued

Section 4 of Geothermal Steam Act of 1970 authorizes competitive bidding as sole basis for issuance of geothermal leases for lands determined to be within a KGRA.

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Robert G. Lynn, 19 IBLA 167 (Mar. 17, 1975)

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of

GEOTHERMAL LEASES--Continued

KNOWN GEOTHERMAL RESOURCES AREA--Continued

the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Delta Funds, Inc., 19 IBLA 185 (Mar. 18, 1975)

An application for a noncompetitive geothermal lease must be rejected with respect to land described in the application which, although not within a known geothermal resources area (KGRA) at the time the application is filed, is designated as being within a KGRA before a lease is issued for said land.

Baumgartner Companies, 21 IBLA 133 (July 14, 1975)

There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in sec. 2(e) of the Geothermal Steam Act of 1970.

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a KGRA.

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LANDS SUBJECT TO

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Energy Partners, Edward B. Towne, 21 IBLA 352 (Aug. 25, 1975)

GEOTHERMAL LEASES--Continued

NONCOMPETITIVE LEASES

Section 4 of Geothermal Steam Act of 1970 authorizes competitive bidding as sole basis for issuance of geothermal leases for lands determined to be within a KGRA.

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An application for a noncompetitive geothermal lease must be rejected with respect to land described in the application which, although not within a known geothermal resources area (KGRA) at the time the application is filed, is designated as being within a KGRA before a lease is issued for said land.

Baumgartner Companies, 21 IBLA 133 (July 14, 1975)

GEOTHERMAL LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a KGRA.

Charles J. Heringer, 21 IBLA 254 (Aug. 11, 1975)

Where a noncompetitive geothermal resources lease application indicates that the applicant is not the sole party in interest and is not accompanied by the information required by 43 CFR 3202.2-5 with respect to the nature of the agreement between the parties in interest and their qualifications, the offer must be rejected even if the applicant is, in fact, contrary to the information disclosed on the lease application, the sole party in interest, where such fact is unknown to the BLM.

An application for a noncompetitive lease of geothermal resources in the name of a corporation is properly rejected where it is not accompanied by a statement as to corporate qualifications or a reference by serial number to a record in which such statement previously had been filed.

Central Nevada Corporation, 21 IBLA 308 (Aug. 14, 1975)

GRAZING AND GRAZING LANDS

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Janson (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

Where the record does not clearly show whether either or both of two grazing lease applicants are preference right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

Elmer M. Johnson, 20 IBLA 111 (Apr. 25, 1975)

GRAZING LEASES

GENERALLY

A determination by a District Manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

An appeal from a District Manager's decision reducing the authorized use of lands offered under a sec. 15 grazing lease will be dismissed where the grazing season covered by the term of the proposed lease has expired and the appellant must meet a precondition before any future lease issues. The dismissal, however, will be without prejudice to the appellant's submitting evidence to the District Manager to disprove the determination of the carrying capacity of the range, if he otherwise meets the precondition for a lease.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Janson (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

The regulations pertaining to sec. 15 grazing leases provide that a corporation is a qualified applicant for a lease if it is a corporation whose controlling interest is vested in persons who are engaged in the livestock business. 43 CFR 4121.1-1(b). Where the corporate applicant itself is engaged in a livestock business such a showing is sufficient for the corporation to meet this requirement without the need for those holding a controlling interest in the corporation to make an additional showing that they are engaged in a livestock operation in their individual capacities.

Defenders of Wildlife, 19 IBLA 219 (Mar. 25, 1975)

Where the record does not clearly show whether either or both of two grazing lease applicants are preference right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

Elmer M. Johnson, 20 IBLA 111 (Apr. 25, 1975)

GRAZING LEASES--Continued

APPLICATIONS

The regulations require that a qualified applicant for a sec. 15 grazing lease be engaged in the livestock business and have a need for the land. Therefore, unless an applicant owns livestock for business purposes, or is a recognized livestock operator who temporarily or due to circumstances beyond his control does not own any livestock, he is not qualified to be awarded a lease.

Ralph E. Nolan, 18 IBLA 432 (Feb. 14, 1975)

The regulations pertaining to sec. 15 grazing leases provide that a corporation is a qualified applicant for a lease if it is a corporation whose controlling interest is vested in persons who are engaged in the livestock business. 43 CFR 4121.1-1(b). Where the corporate applicant itself is engaged in a livestock business such a showing is sufficient for the corporation to meet this requirement without the need for those holding a controlling interest in the corporation to make an additional showing that they are engaged in a livestock operation in their individual capacities.

Defenders of Wildlife, 19 IBLA 219 (Mar. 25, 1975)

A District Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon the regulatory criterion of historical use and there are no convincing reasons warranting a change of lessee.

George Annis, 20 IBLA 115 (Apr. 25, 1975)

CANCELLATION OR REDUCTION

A grazing lease issued pursuant to sec. 15 of the Taylor Grazing Act is properly canceled where the lessee has violated the terms of the lease and the regulations by subleasing lands within the area of the lease.

Coronado Development Corporation, 19 IBLA 71 (Feb. 26, 1975)

Where a reduction in the authorized use of lands subject to a sec. 15 grazing lease is required to conform to the grazing capacity of such lands as determined by a District Manager, the full amount of the downward adjustment must be imposed immediately.

An appeal from a District Manager's decision reducing the authorized use of lands offered under a sec. 15 grazing lease will be dismissed where the grazing season covered by the term of the proposed lease has expired and the appellant must meet a precondition before any future lease issues. The dismissal, however, will be without prejudice to the appellant's submitting evidence to the District Manager to disprove the determination of the carrying capacity of the range, if he otherwise meets the precondition for a lease.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

CANCELLATION OR REDUCTION--Continued

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Janson (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

An appeal from a decision canceling a grazing lease for loss of control of non-federal lands upon which the lease was based will be dismissed where the lease has expired by its terms. The dismissal will be without prejudice to a new lease application for the grazing lands which the appellant may decide to submit.

Ralph Rogers, 22 IBLA 31 (Sept. 10, 1975)

der the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

Edward F. Naughton, 23 IBLA 134 (Dec. 23, 1975)

PREFERENCE RIGHT APPLICANTS

The regulations require that a qualified applicant for a sec. 15 grazing lease be engaged in the livestock business and have a need for the land. Therefore, unless an applicant owns livestock for business purposes, or is a recognized livestock operator who temporarily or due to circumstances beyond his control does not own any livestock, he is not qualified to be awarded a lease.

Ralph E. Holan, 18 IBLA 432 (Feb. 14, 1975)

Where a sec. 15 grazing lease is issued to an applicant whose brother is an employee of this Department, and such employee owns stock in the corporation that owns the contiguous fee land, control over which the applicant asserts as the basis for his preference right to the grazing lease, such applicant cannot be granted the desired grazing lease. Any such lease must be canceled when the facts are called to the Department's attention. This result occurs

PREFERENCE RIGHT APPLICANTS--Continued

under 43 CFR 7.2 and 7.3 which prohibit any employee from acquiring or retaining any interest in the lands or resources administered by the Bureau of Land Management. The prohibition extends to any interest in land which in any manner is connected with or involves the use of the grazing resources administered by the Bureau of Land Management.

Donald E. and Nancy P. Janson (On Reconsideration), 19 IBLA 154 (Mar. 14, 1975) 82 I.D. 93

Where the record does not clearly show whether either or both of two grazing lease applicants are preference right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

Elmer M. Johnson, 20 IBLA 111 (Apr. 25, 1975)

A District Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon the regulatory criterion of historical use and there are no convincing reasons warranting a change of lessee.

George Annis, 20 IBLA 115 (Apr. 25, 1975)

RENEWAL

A District Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon the regulatory criterion of historical use and there are no convincing reasons warranting a change of lessee.

George Annis, 20 IBLA 115 (Apr. 25, 1975)

GRAZING PERMITS AND LICENSES

GENERALLY

A decision denying an application for 100 percent nonuse of grazing privileges and requiring applicants to initiate substantial active use within two years or suffer revocation of their base property qualifications will be affirmed where the applicant is not engaged in the livestock business, has not used his grazing privileges for many years, and where nonuse is not necessary for range conservation, animal health, or other justifiable cause.

Floyd and Corwin Silva, 20 IBLA 237 (May 15, 1975)

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

Where by final judgment a court has determined that an environmental impact statement must be filed under 42 U.S.C. § 4332 (1970) according to a particular schedule for the grazing lease program in a particular area, such an approved schedule will be followed by the Department.

Sidney Brooks, et al., 22 IBLA 177 (Sept. 30, 1975)

ADJUDICATION

A decision by a District Manager denying a requested award of grazing privileges must state the reasons therefore, and not simply the conclusion that the applicant is not qualified.

Ervin J. Crowder, 20 IBLA 305 (May 30, 1975)

APPEALS

The doctrine of administrative finality, the administrative counterpart of res judicata, ordinarily bars reopening the issue of a permittee's class i base property qualifications resolved in a prior Departmental decision, but will not prevent modification of a decision to correct a conclusion inconsistent with the legal ruling of the case and apparently the result of an oversight as to the basis of the factual finding upon which it relies.

T. T. Cowgill, et al., 19 IBLA 274 (Apr. 7, 1975)

While 43 CFR 4.470(b) bars subsequent challenge to "matters adjudicated" in a final decision of a District Manager when no appeal of that decision is undertaken, the presence or absence of excess forage in successive growing seasons is not a matter subject to this prohibition.

A decision by a District Manager denying a requested award of grazing privileges must state the reasons therefore, and not simply the conclusion that the applicant is not qualified.

Ervin J. Crowder, 20 IBLA 305 (May 30, 1975)

BASE PROPERTY (LAND)

Generally

The doctrine of administrative finality, the administrative counterpart of res judicata, ordinarily bars reopening the issue of a permittee's class i base property qualifications resolved in a prior

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Generally--Continued

Departmental decision, but will not prevent modification of a decision to correct a conclusion inconsistent with the legal ruling of the case and apparently the result of an oversight as to the basis of the factual finding upon which it relies.

T. T. Cowgill, et al., 19 IBLA 274 (Apr. 7, 1975)

CANCELLATION OR REDUCTION

A decision denying an application for 100 percent nonuse of grazing privileges and requiring applicants to initiate substantial active use within two years or suffer revocation of their base property qualifications will be affirmed where the applicant is not engaged in the livestock business, has not used his grazing privileges for many years, and where nonuse is not necessary for range conservation, animal health, or other justifiable cause.

Floyd and Corwin Silva, 20 IBLA 237 (May 15, 1975)

The term "two consecutive years" in 43 CFR 4115.2-1(e)(9) means two consecutive application years from the date established by a district manager as the deadline for filing grazing applications.

Under 43 CFR 4115.2-1(e)(9), cancellation of a grazing license is proper when a user of the Federal range fails to include in an application for grazing license renewal, the base property qualifications (for active, nonuse, or combination thereof) on or before the duly established filing date for two consecutive grazing seasons, regardless of whether the lands surrounding the leased lands are controlled by licensee and his relatives.

John Budspeth, 21 IBLA 91 (June 27, 1975)

TRESPASS

A cattle trespass decision rendered by an administrative law judge may be set aside and remanded where the decision does not include a statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion as required for initial decisions under 5 U.S.C. § 557 (1970) and 43 CFR 4.475.

Where a grazing district cattle trespass complaint refers to previous trespasses by the base property owner, he is served with the complaint, and the record indicates he intervened at the hearing thereon but the decision issued makes no mention thereof, the decision appealed from may be set aside and remanded for clarification.

United States v. John J. Casey, 22 IBLA 358 (Nov. 14, 1975) 82 I.D. 546

EARINGS
(See also Administrative Procedure, Federal Coal Mine Health and Safety Act of 1969, Geothermal Lesses, Grazing Permits and Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act)

Where the party hearing the risk of nonpersuasion does not appear at a hearing ordered pursuant to 43 CFR 4.415, that party's appeal is properly dismissed.

Stanley G. West, 18 IBLA 337 (Jan. 10, 1975)

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

If an applicant for a headquarters site does not allege facts that, if taken as true, show that she uses the site in connection with a trade, manufacture, or other productive industry, the Bureau of Land Management may cancel her claim without a hearing.

LaVeta O. Schoephorster, 19 IBLA 90 (Mar. 3, 1975)

When an appellant asserts facts which do not on their face sustain the contentions on appeal, this Board will deny a request for a hearing to determine the asserted issues of fact. 43 CFR 4.415.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (Mar. 5, 1975)

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970) (2) there are no intervening rights (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 et seq., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim,

HEARINGS--Continued

the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

Under the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970), where the record includes a statement as to a principal place of residence which conflicts with a more detailed statement made under oath by the same person, the matter may be remanded for hearing in order to resolve the conflict and protect the rights of a third party.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

An applicant for a Native allotment has no right to a hearing, and none is required where there is no offer of proof which indicates that the findings of the State Office were incorrect, or where an offer of evidence is unaccompanied by a satisfactory explanation why it was not submitted to the State Office within the time provided.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

HOMESTEADS (ORDINARY)
(See also Additional Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads)

GENERALLY

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior establishes the unit of acreage per entry and publicly announces the availability of water for irrigation.

Richard E. Crill, et al., 18 IBLA 428 (Feb. 14, 1975)

An application for homestead entry for land in a national forest must be rejected as the Secretary of the Interior has no authority to permit such a disposition.

Gustavus A. Bremer, et ux., 21 IBLA 15 (June 16, 1975)

CONTESTS

A charge that the entryman failed to cultivate the required acreage in the second entry year is not sustained where the contestant's evidence consists mainly of a general statement by a few persons concluding that the entryman's mode of cultivation was inadequate. In the face of testimony to the contrary by contestee's witnesses which leaves the evidence in equipoise, contestant has not met his burden of convincingly establishing the fact of the entryman's failure to cultivate in the second entry year.

Thomas B. Kimball v. William Henry Selby, 20 IBLA 23 (Apr. 16, 1975)

HOMESTEADS (ORDINARY)--Continued

CONTESTS--Continued

A private contest brought against an Alaskan homestead entry charging that the entryman failed to meet the minimum cultivation requirements for the second entry year must be dismissed when it is disclosed that such information was of record in the Bureau of Land Management office at the time the complaint was filed.

Olan W. Christie v. Larry E. O'Glesbee, 23 IBLA 155 (Dec. 23, 1975)

CULTIVATION

A homestead entryman is irretrievably in default on his entry where he failed to meet the cultivation requirements in the second, third, and during the growing season of the fourth year of the entry, when he left the land in September of the fourth year for the avowed purpose of making money to complete his improvements.

Arthur Lloyd Zellweger, 19 IBLA 118 (Mar. 5, 1975)

The breaking, planting or seeding and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

Where it appears that land has been hand seeded and rolled with a log in a similar manner as used on other homestead entries in the area, and where it is not established that such seeding and rolling is not an unreasonable practice for the type of land and weather conditions involved, the entryman's acts may be found to have been calculated to produce profitable results, notwithstanding his efforts failed to produce a useful crop.

A charge that the entryman failed to cultivate the required acreage in the second entry year is not sustained where the contestant's evidence consists mainly of a general statement by a few persons concluding that the entryman's mode of cultivation was inadequate. In the face of testimony to the contrary by contestee's witnesses which leaves the evidence in equipoise, contestant has not met his burden of convincingly establishing the fact of the entryman's failure to cultivate in the second entry year.

Thomas B. Kimball v. William Henry Selby, 20 IBLA 23 (Apr. 16, 1975)

Where a homestead claimant submits a final proof which shows on its face that he has not cultivated the full area required, and the record reflects that he has not qualified for military credit or reduction in the cultivation requirements, action rejecting final proof and canceling the claim may be suspended to permit the entryman to apply to purchase not more than five acres under the Homesite Act of May 26, 1934, failing which the proof will be finally rejected and the claim canceled.

James R. Murphey, 20 IBLA 129 (May 5, 1975)

HOMESTEADS (ORDINARY)--Continued

FINAL PROOF

The breaking, planting or seeding and tillage for a crop which constitute cultivation of the soil of a homestead entry must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

Where it appears that land has been hand seeded and rolled with a log in a similar manner as used on other homestead entries in the area, and where it is not established that such seeding and rolling is not an unreasonable practice for the type of land and weather conditions involved, the entryman's acts may be found to have been calculated to produce profitable results, notwithstanding his efforts failed to produce a useful crop.

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James R. Murphey, 20 IBLA 129 (May 5, 1975)

LANDS SUBJECT TO

An application to make a homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior establishes the unit of acreage per entry and publicly announces the availability of water for irrigation.

Richard E. Crill, et al., 18 IBLA 428 (Feb. 14, 1975)

An application for homestead entry for land in a national forest must be rejected as the Secretary of the Interior has no authority to permit such a disposition.

Gustavus A. Bremer, et ux., 21 IBLA 15 (June 16, 1975)

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

HOMESTEADS (ORDINARY)--Continued

RESIDENCE

A homestead claimant who fails to establish residence on the land within 1 year after initiating the claim has failed to comply with the law and his entry must be canceled.

Robert A. Bice, Jr., 22 IBLA 291 (Nov. 3, 1975)

SECOND ENTRY

An application for a second homestead entry under the Act of Sept. 5, 1914, is properly rejected in the absence of sufficient showing that the applicant lost, forfeited, or abandoned the original entry through no fault of his own or because of matters beyond his control.

Arthur Lloyd Zellweger, 19 IBLA 118 (Mar. 5, 1975)

SETTLEMENT

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior establishes the unit of acreage per entry and publicly announces the availability of water for irrigation.

Richard E. Grill, et al., 18 IBLA 428 (Feb. 14, 1975)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

CLASSIFICATION

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land is more valuable for the timber found thereon than for agricultural or grazing purposes. An application must be rejected where there is such a determination and there is neither confusion regarding the basis of the report nor error apparent on the face of the report.

Merlin W. Tripp, Sr., 21 IBLA 85 (June 27, 1975)

LANDS SUBJECT TO

In applying the statutory criteria to an Indian allotment application for land in a national forest under the Forest Allotment Act of June 25, 1910, 25 U.S.C. § 337 (1970), the Secretary of the Interior is bound by the determination of the Secretary of Agriculture that the land is more valuable for the timber found thereon than

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

for agricultural or grazing purposes. An application must be rejected where there is such a determination and there is neither confusion regarding the basis of the report nor error apparent on the face of the report.

Merlin W. Tripp, Sr., 21 IBLA 85 (June 27, 1975)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated * * *." Pending final action on the matter, public lands are not open to Indian allotment settlement and disposition following the filing and noting of an application by the Bureau of Land Management for a proposed withdrawal; regulation 43 CFR 2091.2-5(a) provides that the noting of an application for withdrawal on the official plats maintained in the proper land office shall temporarily segregate the subject land from settlement under the public land laws to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal. Following issuance of a public land order withdrawing the subject land, Indian allotment applications previously held in a suspense status are properly rejected.

Thurman Banks, et al., 22 IBLA 205 (Oct. 15, 1975)

Withdrawal of land in 1940, inclusion of the land in a grazing lease under authority of the Alaska Grazing Act of Mar. 4, 1927, revocation of the withdrawal in 1961, and selection of the land by the State of Alaska under authority of the Statehood Act in 1963 while the grazing lease was still extant, effectively kept the land closed to the initiation of rights under the Native Allotment Act at all times during the period from 1940 to the revocation of the Allotment Act on Dec. 18, 1971, by sec. 18 of the Alaska Native Claims Settlement Act.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

INDIAN LANDS
(See also Indian Probate)

GENERALLY

Sec. 8 of the Act of Apr. 23, 1904, 33 Stat. 302, providing for survey and allotment of lands within the Flathead Indian Reservation, excepts from mineral entry those lands classified as "timber land" by a Presidential Commission, and the Department of the Interior has no authority to overturn such classification and declare the "timber lands" more valuable as "mineral lands."

Lands set apart as an Indian reservation cease to be a part of the public domain. A mining claim located on Indian lands not opened to entry is void ab initio.

INDIAN LANDS--Continued

GENERALLY--Continued

Unless there is an express provision to the contrary effect, lands contained in an Indian reservation are segregated for the benefit of the Indians, and withdrawn from the operation of the public land laws, including the mining laws.

Montana Copper King Mining Co., et al., 20 IBLA 30 (Apr. 16, 1975)

ALLOTMENTS

Generally

The Quapaw Indians were allotted under the Act of Mar. 2, 1895, 28 Stat. 876, 907. The initial period of restrictions against alienation contained in this Act was extended by subsequent amendments to Mar. 3, 1971.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

Patents

Applications

Application for patent in fee will be denied where applicant is found incapable of properly or adequately managing her own affairs.

Administrative Appeal of Ethel H. Not Afraid v. Area Director, Billings, et al., 3 IBIA 235 (Jan. 31, 1975) 82 I.D. 51

CEDED LANDS

The Mineral Leasing Act of 1920 is not applicable to lands of the Wind River Indian Reservation which were ceded by the Indians to the United States in trust for disposition but were subsequently restored to tribal ownership. Such lands may be leased only under the Act of May 11, 1938, 25 U.S.C. § 396a et seq.

The Mineral Leasing Act of 1920 is not applicable to the ceded but undisposed of lands of the Wind River Indian Reservation. Such lands may be leased only under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Company, 19 IBLA 245 (Mar. 28, 1975)

LEASES AND PERMITS

Generally

A lease canceled by the Superintendent of an Indian Agency for nonpayment of rent is not reinstated when rents are subsequently accepted pending an administrative appeal.

Administrative Appeal of Wayne H. Evans v. Aberdeen Area Director, et al., 4 IBIA 202 (Nov. 14, 1975)

LEASES AND PERMITS--Continued

Farming and Grazing

The restricted allotment of any Indian may be leased for farming or grazing purposes by the allottee or his heirs, subject to the approval of the superintendent or other officer in charge of the reservation where the land is located, under such rules and regulations as the Secretary of the Interior may prescribe.

Administrative Appeal of W. J. B. Graham and William S. Graham v. Area Director, B.I.A., Billings, and All Other Interested Parties, 4 IBIA 205 (Nov. 19, 1975) 82 I.D. 568

Grazing

Allocation

Generally

A tribal governing body may authorize the allocation of grazing privileges for tribal and tribally controlled government land to Indian corporations, Indian associations, and adult tribal members.

Administrative Appeal of Sally Ann Pankratz and Aurelia Spencer v. Superintendent, Fort Belknap Agency; Area Director, Billings Area Office; Fort Belknap Community Council; and Arnold Allen, 4 IBIA 231 (Nov. 26, 1975) 82 I.D. 585

Revocation or Cancellation

The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 days written notice for allocated Indian use.

Administrative Appeal of Sally Ann Pankratz and Aurelia Spencer v. Superintendent, Fort Belknap Agency; Area Director, Billings Area Office; Fort Belknap Community Council; and Arnold Allen, 4 IBIA 231 (Nov. 26, 1975) 82 I.D. 585

Long-term Business

Cancellation

A lease may be canceled by the Secretary, at the request of the lessor where lessee has failed to carry out specific provisions of the lease.

Administrative Appeal of Sessions, Inc. (A California Corporation) v. Richard Amado Miguel (Lessor) Lease No. PSL-35, 4 IBIA 84 (July 10, 1975) 82 I.D. 331

Rentals

Acceptance of rentals by a lessor subsequent to default on specific provisions of the lease by the lessee does not constitute waiver of items in default in the absence of showing that lessor voluntarily or intentionally waived the requirements under the lease.

Administrative Appeal of Sessions, Inc. (A California Corporation) v. Richard Amado Miguel (Lessor) Lease No. PSL-35, 4 IBIA 84 (July 10, 1975) 82 I.D. 331

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Long-term Business--Continued

Waiver

Generally

Acceptance of rentals by a lessor subsequent to default on specific provisions of the lease by the lessee does not constitute waiver of items in default in the absence of showing that lessor voluntarily or intentionally waived the requirements under the lease.

Administrative Appeal of Sessions, Inc. (A California Corporation) v. Richard Amado Miguel (Lessor) Lease No. PSL-35, 4 IBIA 84 (July 10, 1975) 82 I.D. 331

Oil and Gas

In exercising its discretion to lease or not to lease oil and gas under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970), the Department may reject an oil and gas lease offer filed thereunder, where the minerals are held in trust for the Shoshone and Arapaho Indians and are leasable under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Company, 18 IBLA 326 (Jan. 7, 1975)

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corporation, 22 IBLA 124 (Sept. 26, 1975)

Subleases, Assignments, Amendments, Encumbrances

A sublease, assignment, amendment or encumbrance of any lease may be made only with the approval of the Secretary and the written consent of all parties to such lease.

Administrative Appeal of W. J. B. Graham and William S. Graham v. Area Director, B.I.A., Billings, and All Other Interested Parties, 4 IBIA 205 (Nov. 19, 1975) 82 I.D. 568

Violation

Damages

The measure of damages is governed primarily by applicable provisions of the lease to the extent specified and provided therein.

Administrative Appeal of Paul N. Jackson v. Area Director, Anadarko, et al., 4 IBIA 39 (Apr. 29, 1975) 82 I.D. 191

INDIAN LANDS--Continued

OIL AND GAS LEASING

Tribal Lands

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corporation, 22 IBLA 124 (Sept. 26, 1975)

PATENT IN FEE

Jurisdiction

Issuance of a patent in fee on a trust allotment results in the Secretary's loss of jurisdiction and authority thereover.

Administrative Appeal of James P. Bowen v. Superintendent, Northern Cheyenne Agency, et al., 3 IBIA 224 (Jan. 21, 1975) 82 I.D. 19

INDIAN PROBATE
(See also Indian Lands, Indian Tribes)

100.0 GENERALLY

Where the constitutionality of the Act of Dec. 31, 1970 (25 U.S.C. § 607, 84 Stat. 1874) is challenged in court, the parties are not precluded from entering into a stipulation for settlement upon which the court may enter a consent judgment rendering a ruling upon the constitutional issue unnecessary.

Estate of Benjamin Harrison Stowhy (Deceased Yakima Allottee No. 2455) and Estate of Mary G. Guiney Harrison (Deceased Colville Allottee No. S-925), 3 IBIA 243 (Feb. 4, 1975) 82 I.D. 55

The Department of the Interior does not have the authority to declare a statute unconstitutional as being in violation of the Constitution of the United States.

Estate of Joyce Mary James, 4 IBIA 81 (June 20, 1975)

Indians specifically excluded from the General Allotment Act are precluded from invoking rights extended by the Act or any amendment thereto. However, simply because the Quapaws were allotted under a separate act of Congress does not support a conclusion that the heirship provisions of the General Allotment Act cannot be applied to them.

Where no section of the General Allotment Act suggests that the Quapaws were to be excluded from the Act's provisions and where no section of the Quapaw Allotment Act suggests the inapplicability of the General Allotment Act to

INDIAN PROBATE--Continued

100.0 GENERALLY--Continued

allotted Quapaw lands, there lies a reasonable basis for jointly interpreting these acts. The correctness of applying the heirship provisions of the General Allotment Act to the Quapaws is conclusively established because the Quapaw Allotment Act fails to adopt state law.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

APPEAL

130.4 Matters Considered on Appeal

Jurisdiction is fundamental to the Board's reviewing authority and it will be examined on appeal even though not raised as an issue previously.

Newly discovered evidence is to be presented in support of a petition for a rehearing and will not be considered on an appeal.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

130.7 Timely Filing

The date the petition is received in the Department of the Interior, rather than the date it was mailed, controls.

Estate of Cato T. Kamiakin (Tomeo), 4 IBIA 132 (Aug. 20, 1975)

130.10 Extension of Time for Filing

That part of 43 CFR 4.22(f)(1) that precludes extensions of time for filing notices of appeal is jurisdictional from which there is no further administrative appeal or remedy.

Estate of Cei-kaun-mah (Bert), 4 IBIA 129 (Aug. 20, 1975) 82 I.D. 408

ATTORNEYS AT LAW

140.2 Fees

Reasonable fees may be allowed attorney for petitioner in a Departmental reopening where attorney petitions for their allowance and his client agrees that they should be paid, then such fees may be ordered paid from Indian client's recovered distributive share.

Estate of Charley (Jack) Santio, 4 IBIA 244 (Dec. 2, 1975)

INDIAN PROBATE--Continued

CHILDREN, ADOPTED

155.4 Indian Custom Adoptions

An Indian custom adoption, alleged to have been made prior to the date of the Act of July 8, 1940, (54 Stat. 746, 25 U.S.C. § 372a (1970)), cannot be recognized as valid unless the adoption is recorded, as provided in the Act, during the lifetime of the adoptive parents.

Estate of Milward Wallace Ward, 4 IBIA 97 (July 18, 1975) 82 I.D. 341

CHILDREN, ILLEGITIMATE

160.0 Generally

In a case of illegitimacy, it is a reasonable presumption that an unmarried father may refrain from widely proclaiming parenthood.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

EVIDENCE

225.4 Newly Discovered Evidence

Newly discovered evidence is to be presented in support of a petition for a rehearing and will not be considered on an appeal.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

225.5 Presumptions

Although the marriage provisions of a law and order code may be interpreted as recognizing as valid only marriages accomplished by licensing and ceremony, there is a strong public policy favoring marriage which advises that a marriage should be presumed valid unless disproved. This presumption has been extended to marriage by Indian custom.

Estate of Johnnie Holmes, 4 IBIA 175 (Oct. 31, 1975) 82 I.D. 531

In a case of illegitimacy, it is a reasonable presumption that an unmarried father may refrain from widely proclaiming parenthood.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

225.7 Proof of Marriage

Although the marriage provisions of a law and order code may be interpreted as recognizing as valid only marriages accomplished by licensing and ceremony, there is a strong public policy favoring marriage which advises that a marriage should be presumed valid unless disproved. This presumption has been extended to marriage by Indian custom.

Estate of Johnnie Holmes, 4 IBIA 175 (Oct. 31, 1975) 82 I.D. 531

HEARING

255.3 Full and Complete

A full and complete hearing is had on proof of a will when all parties are afforded an opportunity to present evidence and to cross-examine witnesses.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(See also 2 IBIA 53, 80 I.D. 617 (1974))

INHERITING

285.2 Non-Indian

The United States has no interest to protect in trust lands inherited by a non-Indian, therefore not obligated to provide services or protection to such a person.

Administrative Appeal of James P. Bowen v. Superintendent, Northern Cheyenne Agency, et al., 3 IBIA 224 (Jan. 21, 1975) 82 I.D. 19

JUDICIAL REVIEW

300.0 Generally

Where the constitutionality of the Act of Dec. 31, 1970 (25 U.S.C. § 607, 84 Stat. 1874) is challenged in court, the parties are not precluded from entering into a stipulation for settlement upon which the court may enter a consent judgment rendering a ruling upon the constitutional issue unnecessary.

Estate of Benjamin Harrison Stowhy (Deceased Yakima Allottee No. 2455) and Estate of Mary C. Cuiney Harrison (Deceased Colville Allottee No. S-925), 3 IBIA 243 (Feb. 4, 1975) 82 I.D. 55

MARRIAGE

325.6 Proof of Marriage

Where a law and order code contains no express provision nullifying an Indian custom marriage and where state law affirmatively recognizes such marriage, an uncontested determination of heirship handed down two decades ago which is consistent with state law respecting valid marriages, ought not be disturbed.

Estate of Johnnie Holmes, 4 IBIA 175 (Oct. 31, 1975) 82 I.D. 531

As between two alleged common-law marriages, the law favors the most recent in time over a relationship between two who formerly were married.

Estate of Phillip Tooisgah, 4 IBIA 189 (Nov. 13, 1975) 82 I.D. 541

NOTICE OF HEARING

345.0 Generally

It is incumbent upon one claiming lack of notice of a hearing by the Interior Department to determine heirs of a deceased allottee to make a showing of such lack.

Estate of Tenie Teanie Lena Jack Wagon Hill Reyes, 4 IBIA 156 (Oct. 17, 1975) 82 I.D. 522

RECONSIDERATION

365.0 Generally

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors such as newly discovered evidence or fraud are involved.

A request for reconsideration of the action of the Department in approving a will which is based upon an allegation of undue influence, or fraud in its procurement, will be denied where no evidence is furnished in support of the allegation.

Estate of Ruth Nahcotaty (Williams or Daukei) (Caddo Allottee No. 19), 3 IBIA 270 (Mar. 7, 1975)

REHEARING

370.0 Generally

An order denying a rehearing is proper when the petition for rehearing alleging newly discovered evidence fails to state any other grounds which would require a rehearing and, accordingly, an appeal from the denial will be dismissed.

Estate of Millward Wallace Ward, 4 IBIA 97 (July 18, 1975) 82 I.D. 341

Newly discovered evidence is to be presented in support of a petition for a rehearing and will not be considered on an appeal.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

370.1 Pleading, Timely Filing

A petition for rehearing filed with an Examiner of Inheritance was properly denied by the Examiner where the petition was not filed within the period prescribed by the applicable regulations.

Where a petition for rehearing was not filed in the appropriate office of the Department of the Interior until the 61st day after entry of the original order, the Hearing Examiner lacked authority to extend the time for filing thereof and had no jurisdiction to determine the substantive issues raised in the petition on their merits.

Estate of Andrew Jackson Marsh, 4 IBIA 106 (July 29, 1975)

INDIAN PROBATE--Continued

REOPENING

375.0 Generally

Although the Superintendent of an Indian agency has no interest in the outcome he is a proper official of the Bureau of Indian Affairs to file a petition for reopening, under the authority of 43 CFR 4.242.

Estate of John Mahkuk, 3 IBIA 291 (Mar. 20, 1975)

A petition for the reopening of Indian heirship proceedings must be submitted within the period of time prescribed in the departmental regulations.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (June 2, 1975)

A petition for the reopening of an Indian heirship proceeding filed 12 years after the Department had determined the heirs of the Indian decedent will be denied as untimely.

A request for a reopening filed years after the expiration of the period allowed will be denied even where the request for reopening is made by one who was not given an opportunity to be heard and who would clearly be entitled to the relief sought if his petition had been timely made.

Estate of Ke-i-ze or Julian Sandoval, 4 IBIA 115 (Aug. 18, 1975) 82 I.D. 402

Although the Superintendent of an Indian Agency has no interest in the outcome, he is a proper official of the Bureau of Indian Affairs to file a petition for reopening, under the authority of 43 CFR 4.242.

Estate of Rebecca (Wahbneme) Pigeon or Rebecca White Pigeon or Ahn Wahn Ke, 4 IBIA 168 (Oct. 30, 1975)

In the absence of a showing that a manifest injustice is possible if a case closed for more than 3 years is not reopened, a petition for reopening will not be allowed.

When the evidence before the examiner was uncontradicted as to the factual determination of marriage, and a request for reopening exceeds by 22 years an uncontested determination of heirship, the usual reluctance to avoid disturbance of a fact-finder's decision takes on greater emphasis.

Even if petitioners were entitled to their requested relief, which is unsupported by the record, an untimely petition can be denied -- even for a petitioner who was not given an opportunity to be heard in the original proceeding.

Estate of Johnnie Holmes, 4 IBIA 175 (Oct. 31, 1975) 82 I.D. 531

INDIAN PROBATE--Continued

REOPENING--Continued

375.0 Generally--Continued

The Secretary of the Interior has inherent power to reopen and review administrative determinations purporting to dispose finally of departmental proceedings when some factor, such as newly discovered evidence or fraud, is brought to his attention.

Estate of San Pierre Kilkakhan (Sam E. Hill), 4 IBIA 242 (Dec. 2, 1975)

375.1 Waiver of Time Limitation

A petition to reopen filed more than three years after the final determination of heirs will be granted when there is compelling proof that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

Estate of Francis or Frank DeMarrias (Deceased Sisseton-Wahpeton Sioux Allottee No. SW-381-737), 3 IBIA 218 (Jan. 3, 1975)

To avoid perpetuating a manifest injustice, a petition to reopen filed more than three years after the final determination of the heirs will be granted where compelling proof is shown that the delay was not occasioned by the lack of diligence on the part of the petitioning parties.

Estate of Mollie Kinsman Pomona (Deceased Unallotted Mono Indian), 3 IBIA 232 (Jan. 31, 1975)

It is in the public interest to require Indian Probate proceedings be concluded within some reasonable time in order that property rights of heirs and devisees in Indian allotments be stabilized.

Estate of Virginia Kemp, Penn, Lyon, Webster, Woodhull, Stabler (Omaha Unallotted), 3 IBIA 256 (Feb. 6, 1975)

An Administrative Law Judge is without power to reopen a case after the passage of three years from the date the Judge enters the order, but the Secretary is not bound by the limitations of 43 CFR 4.242 and he has authority at any time to review on proper grounds.

Estate of John Mahkuk, 3 IBIA 291 (Mar. 20, 1975)

Petition to reopen filed more than three years after the final determination of heirs will not be granted unless there is compelling proof that the delay was not occasioned by lack of diligence on the part of the petitioning party.

INDIAN PROBATE--Continued

REOPENING--Continued

375.1 Waiver of Time Limitation--Continued

It is in the public interest to require Indian Probate proceedings be concluded within some reasonable time in order that the property rights of heirs and devisees of trust allotments be stabilized.

Estate of Everett Nopah, 4 IBIA 25 (Apr. 18, 1975)

The Secretary is not bound by the limitations of 43 CFR 4.242 and he may at any time review and reopen estates on proper grounds.

Estate of Henry Max Brouillette, 4 IBIA 48 (May 2, 1975)

It is in the public interest to require Indian probate proceedings be concluded within some reasonable time in order that property rights of heirs and devisees in Indian allotments be stabilized.

Estate of Rose Old Bear Wilson, 4 IBIA 62 (June 2, 1975)

It is in the public interest to require Indian probate proceedings to be concluded within some reasonable time in order that the property rights of heirs and devisees of trust allotments be stabilized.

Estate of Ke-i-ze or Julian Sandoval, 4 IBIA 115 (Aug. 18, 1975) 82 I.D. 402

An Administrative Law Judge is without power to reopen a case after the passage of 3 years from the date the Judge enters the order, but the Secretary is not bound by the limitations of 43 CFR 4.242 and he has authority at any time to review on proper grounds.

Estate of Rebecca (Wahbnene) Pigeon or Rebecca White Pigeon or Ahn Wahn Ke, 4 IBIA 168 (Oct. 30, 1975)

An Administrative Law Judge is without power to reopen a case after the passage of 3 years from the date the judge enters the order, but the Secretary is not bound by the limitations of 43 CFR 4.242 and he may waive the time limitations when some factor, such as newly discovered evidence or fraud is brought to his attention.

Estate of Annie Shandreau Grayeen, 4 IBIA 226 (Nov. 21, 1975)

To avoid perpetuating a manifest injustice, a petition to reopen filed more than 3 years after the final determination of the heirs will be granted where compelling proof is shown that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

Estate of Charley (Jack) Santio, 4 IBIA 244 (Dec. 2, 1975)

INDIAN PROBATE--Continued

SECRETARY'S AUTHORITY

381.0 Generally

The Act of June 25, 1910 (36 Stat. 855), 25 U.S.C. § 372 (1970), gives the Secretary of the Interior statutory authority to determine heirship whether an estate is a trust allotment or a restricted allotment.

The Act of June 25, 1910, confers jurisdiction upon the Secretary to determine heirs beyond a proceeding involving the original allottee. The Secretary's responsibility under the Act is to determine heirship of all Indians who die intestate possessed of trust or restricted property and such responsibility does not terminate until the trusteeship or period of restriction expires.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

381.1 Jurisdiction of the Courts

The Secretary is bound by the order of a court only as to those issues and as to those individuals before the court.

Where issues are decided by the Secretary which do not become the subject of litigation, the Secretary's decision is final as to those issues not litigated.

Estate of John J. Akers, 3 IBIA 300 (Mar. 26, 1975) 82 I.D. 108

STATE LAW

390.0 Generally

Where no section of the General Allotment Act suggests that the Quapaws were to be excluded from the Act's provisions and where no section of the Quapaw Allotment Act suggests the inapplicability of the General Allotment Act to allotted Quapaw lands, there lies a reasonable basis for jointly interpreting these acts. The correctness of applying the heirship provisions of the General Allotment Act to the Quapaws is conclusively established because the Quapaw Allotment Act fails to adopt state law.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

390.2 Applicability to Indian Probate, Testate

Compliance with state laws setting forth requirements for the execution of wills is not required in the execution of Indian wills disposing of trust or restricted property.

Estate of Hiemstemnie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(See also 2 IBIA 53, 80 I.D. 617 (1974))

INDIAN PROBATE--Continued

TRUST PROPERTY

415.0 Generally

Judgments entered against allottees of restricted land are voidable.

Despite strict laws prohibiting the alienation and encumbrance of restricted land, the Secretary has authority to approve an agreement made by an allottee for the disposition of oil income from restricted property.

Estate of Phillip Toolsgah, 4 IBIA 189 (Nov. 13, 1975) 82 I.D. 541

The Act of June 25, 1910 (36 Stat. 855), 25 U.S.C. § 372 (1970), gives the Secretary of the Interior statutory authority to determine heirship whether an estate is a trust allotment or a restricted allotment.

Estate of Louis Harvey Quapaw, 4 IBIA 263 (Dec. 23, 1975) 82 I.D. 640

WILLS

425.21 Publication

There is no requirement in the regulations or elsewhere that the attesting witnesses be present at the same time, or sign in the presence of the testatrix, or that the testatrix acknowledge her subscription to the will to the witnesses, or that she "publish" said instrument by declaring it to be her last will.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(See also 2 IBIA 53, 80 I.D. 617 (1974))

425.28 Testamentary Capacity

425.28.0 Generally

To be competent to make a will the testatrix had to know without prompting not only who were the natural objects of her bounty but also the nature and extent of the property of which she was about to dispose, and the consequences of the dispositions which she was making.

Estate of Joseph Red Eagle, 4 IBIA 52 (May 30, 1975) 82 I.D. 256

425.30 Undue Influence

425.30.1 Failure to Establish, Generally

To invalidate an Indian will because of undue influence, it must be shown: (1) that the decedent was susceptible to being dominated by another; (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling his mind

INDIAN PROBATE--Continued

WILLS--Continued

425.30 Undue Influence--Continued

425.30.1 Failure to Establish, Generally--Continued

and actions; (3) that such person, at the time of the testamentary act, did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(See also 2 IBIA 53, 80 I.D. 617 (1974))

425.30.2 Failure to Establish, Opportunity

The Department of the Interior has held consistently that mere suspicion or an opportunity to influence testator's mind will not sustain an allegation of undue influence where convincing proof is lacking that a person did actually exert influence or there was pressure operating directly upon the testamentary act.

Estate of Joseph Red Eagle, 4 IBIA 52 (May 30, 1975) 82 I.D. 256

425.32 Witnesses, Attesting

An attesting witness is disqualified from acting in an attesting capacity only if his interest in the will is of a fixed, certain, and vested pecuniary character, or one which otherwise gives him a direct and immediate beneficial right under the will.

There is no requirement in the regulations or elsewhere that the attesting witnesses be present at the same time, or sign in the presence of the testatrix, or that the testatrix acknowledge her subscription to the will to the witnesses, or that she "publish" said instrument by declaring it to be her last will.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(See also 2 IBIA 53, 80 I.D. 617 (1974))

WITNESSES

430.4 Observation by Administrative Law Judge

Where testimony is conflicting, the factual findings of the Administrative Law Judge will not be disturbed because he had the opportunity to observe and hear the witnesses.

Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12 (Apr. 17, 1975) 82 I.D. 169
(See also 2 IBIA 53, 80 I.D. 617 (1974))

INDIAN TRIBES
(See also Indian Probate)

ATTORNEYS

Fees

In the absence of an approved contract as required by 25 U.S.C. § 476 (1970), fees for legal services allegedly performed during the interim will not be allowed.

Administrative Appeal of Roy T. Mobley v. Commissioner of Indian Affairs and Jicarilla Apache Tribe, 4 IBIA 1 (Apr. 4, 1975) 82 I.D. 119

CONSTITUTION BYLAWS AND ORDINANCES

Nomination and election of tribal officers are governed by the provisions of its constitution.

Administrative Appeal of Doc Pewewardy v. Commissioner, Bureau of Indian Affairs, et al., 3 IBIA 259 (Feb. 12, 1975)

The organic law of the Hopi Tribe found in a constitution authorized by statute, formulated and adopted by the tribal members and approved by the Secretary of the Interior, should be construed for its ultimate meaning under the same rules as are applied in the construction of state and federal constitutions and statutes.

Administrative Appeal of The Hopi Indian Tribe v. Commissioner, Bureau of Indian Affairs, 4 IBIA 134 (Sept. 26, 1975) 82 I.D. 452

The Department of the Interior has generally deferred to the tribe or tribal council when the interpretation of a constitution involves two reasonable alternatives.

Administrative Appeal of Ralph Davis v. Commissioner, Bureau of Indian Affairs and Sac and Fox Tribe of Oklahoma, 4 IBIA 228 (Nov. 25, 1975)

ELECTIONS

Generally

Nomination and election of tribal officers are governed by the provisions of its constitution.

Administrative Appeal of Doc Pewewardy v. Commissioner, Bureau of Indian Affairs, et al., 3 IBIA 259 (Feb. 12, 1975)

ENROLLMENT

For purposes of which the tribe has complete control, the tribe conclusively determines membership; but where departmental action is authorized, the department may approve or disapprove the membership rolls of the tribe.

Administrative Appeal of Jennifer Rae McQueen, A Minor, By Hazel McQueen, As Next Friend v. Confederated Salish and Kootenai Tribes, Flathead Reservation, Montana, 4 IBIA 65 (June 3, 1975) 82 I.D. 261

INDIAN TRIBES--Continued

JUDGMENT FUNDS

The preparation of a plan providing for the use and distribution of judgment funds under the Act of Oct. 19, 1973 (25 U.S.C. § 1401 et seq., 87 Stat. 468) by the Secretary of the Interior to be submitted to the Congress for approval entails the exercise of the Secretary's discretion and is beyond the authority delegated to the Board of Indian Appeals in (211 D.M. 13.7) Dec. 14, 1973.

Administrative Appeal of Benedict Jozhe and Ft. Sill Apaches v. Commissioner of Indian Affairs, 3 IBIA 266 (Feb. 25, 1975)

TRIBAL AUTHORITY

The organic law of the Hopi Tribe found in a constitution authorized by statute, formulated and adopted by the tribal members and approved by the Secretary of the Interior, should be construed for its ultimate meaning under the same rules as are applied in the construction of state and federal constitutions and statutes.

Administrative Appeal of The Hopi Indian Tribe v. Commissioner, Bureau of Indian Affairs, 4 IBIA 134 (Sept. 26, 1975) 82 I.D. 452

The Department of the Interior has generally deferred to the tribe or tribal council when the interpretation of a constitution involves two reasonable alternatives.

Administrative Appeal of Ralph Davis v. Commissioner, Bureau of Indian Affairs and Sac and Fox Tribe of Oklahoma, 4 IBIA 228 (Nov. 25, 1975)

INDIANS

WELFARE

Where the manual for the conduct of the business of the Bureau of Indian Affairs is issued by the Commissioner under authority delegated by the Secretary, the Board of Indian Appeals lacks jurisdiction to declare the policy reflected by the provisions of the manual to be improper or void or unconstitutional.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (Feb. 25, 1975)

INTERVENTION

Where a grazing district cattle trespass complaint refers to previous trespasses by the base property owner, he is served with the complaint, and the record indicates he intervened at the hearing thereon but the decision issued makes no mention thereof, the decision appealed from may be set aside and remanded for clarification.

United States v. John J. Casey, 22 IBLA 358 (Nov. 14, 1975) 82 I.D. 546

MATERIALS ACT

Where approval of an application to purchase sand and gravel pursuant to the Materials Disposal Act of 1947 is opposed by a native village which has already selected the land on which the sand and gravel is located, and to whom conveyance is imminent, the application will be rejected.

Clarence Wren, 20 IBLA 47 (Apr. 21, 1975)

MINERAL LANDS

GENERALLY

As only nonmineral lands may be appropriated under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate the claim unless it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

Where, after Statehood, a designated school section is surveyed and returned as mineral land (coal) known to be mineral in character prior to the date when the rights of the State would have attached, and where prior to the Act of Jan. 25, 1927 (44 Stat. 1026), the land is withdrawn for national forest purposes, title to the sectfon did not pass to the State.

Malcolm S. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

DETERMINATION OF CHARACTER OF

As only nonmineral lands may be appropriated under the law pertaining to headquarters sites, where the Geological Survey reports that a tract of entered land is nonmineral in character and the Bureau of Land Management therefore formally advises the claimant that the tract is subject to settlement or occupancy and officially acknowledges his claim, and the claimant thereafter complies fully with the law and applies for patent, a subsequent determination that the land is mineral in character will not vitiate the claim unless it is established that the original finding of nonmineral character was error, and that facts in existence at the time equitable title passed required a determination that the land was then mineral. Due process permits such action to be taken only after proper notice and opportunity for hearing.

Wilfred S. Wood, 20 IBLA 284 (May 27, 1975)

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

In a hearing on a patent application filed under the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), the Government has the obligation of making a prima facie case of mineral character between the date the railroad line was definitely located and the date of purchase, whereupon the applicant has the burden of establishing nonmineral character by a preponderance of the evidence.

Land included in an application under sec. 321(b) of the Transportation Act of 1940 is properly determined to be mineral in character between the date the railroad line was definitely located and the date of purchase where the land was covered by mining claims, evidence of extensive and successful mining on adjacent lands was established, and the subject land had similar surface geologic conditions when compared with the surface mineralization on adjacent lands having valuable mineral deposits.

Southern Pacific Company, Heirs of George H. Wedekind, 20 IBLA 365 (June 12, 1975)

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 et seq. (1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

United States v. Long Beach Salt Company, 23 IBLA 41 (Dec. 2, 1975)

LEASES

An application for a hardrock preference-right lease is properly rejected where the permittee does not demonstrate the existence of a workable deposit of the mineral for which the permit was issued, within the term of the permit.

The Hanna Mining Company, 20 IBLA 149 (May 5, 1975)

MINERAL LANDS--Continued

LEASES--Continued

Where application is made to lease reserved minerals in lands patented to the State of California for park or other public purposes, the regulations do not require the discovery of a workable deposit of mineral of commercial quantity and quality as a pre-condition to the issuance of the lease. Indeed, a lease affords the only authority for the conduct of exploratory operations.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

MINERAL RESERVATION

Where application is made to lease reserved minerals in lands patented to the State of California for park or other public purposes, the regulations do not require the discovery of a workable deposit of mineral of commercial quantity and quality as a pre-condition to the issuance of the lease. Indeed, a lease affords the only authority for the conduct of exploratory operations.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

PROSPECTING PERMITS

A permit issued pursuant to section 402 of the President's Reorganization Plan No. 3 of 1946, and the Act of June 30, 1950, 16 U.S.C. § 508b (1970), shall not exceed 20 years' duration. During the 20-year period at any time valuable minerals are discovered the permittee has the right to apply for a mining permit.

The Hanna Mining Company, 20 IBLA 149 (May 5, 1975)

MINERAL LEASING ACT

(See also Coal Leases and Permits, Geothermal Leases, Oil and Gas Leases, Phosphate Leases and Permits)

GENERALLY

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 et seq.(1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

Mining claims located in 1933 under the general mining laws, 30 U.S.C. § 21 et seq.(1970), on lands known to be valuable for minerals subject to leasing under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 et seq. (1970), are null and void ab initio because in 1933 such lands were not open to location and disposition under the mining laws; however, since the passage of the Act of Aug. 12, 1953, 30 U.S.C. § 501 (1970), and the Multiple Mineral Development Act of Aug. 13, 1954, 30 U.S.C. § 521 et seq. (1970), it is possible to locate a mining claim on lands covered by a mineral permit or lease, or application therefor, or which are known to be valuable for leasable minerals, but the leasable minerals are reserved to the United States.

United States v. Long Beach Salt Company, 23 IBLA 41 (Dec. 2, 1975)

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO

The Mineral Leasing Act of 1920 is not applicable to lands of the Wind River Indian Reservation which were ceded by the Indians to the United States in trust for disposition but were subsequently restored to tribal ownership. Such lands may be leased only under the Act of May 11, 1938, 25 U.S.C. § 396a et seq.

The Mineral Leasing Act of 1920 is not applicable to the ceded but undisposed of lands of the Wind River Indian Reservation. Such lands may be leased only under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Company, 19 IBLA 245 (Mar. 28, 1975)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An oil and gas lease offer which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States is properly rejected.

Judith Walker, Ginger Lawhon, 18 IBLA 410 (Feb. 10, 1975)

Government mineral leases are subject to the same rules of construction as those applied in interpreting a contract between two private parties.

While a general rule of contract construction provides that when two provisions of a lease conflict, and one is a printed form while the other is a typed or written addendum, the latter provision will be given force and effect over the former, this rule is only relevant where the two provisions cannot be reconciled.

The addition to a standard lease clause, reserving to the Secretary the right to establish reasonable minimum values for minerals mined, of an insertion which spells out how the gross value is to be set does not deprive the Secretary of the reserved right where the application of the added provisions would deprive the United States of any payment for a recoverable associated mineral.

St. Joe Minerals Corporation, 20 IBLA 272 (May 19, 1975)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

George H. Isbell, Jr., 20 IBLA 312 (May 30, 1975)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

GENERALLY--Continued

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with certain title information in the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Margaret Hughey Hugus, 22 IBLA 146 (Sept. 30, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with reasonable title information in the county recorder's offices as a precondition to lease issuance.

Jean Oakason, 22 IBLA 311 (Nov. 10, 1975)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Frederick L. Smith, 21 IBLA 239 (Aug. 11, 1975)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

LANDS SUBJECT TO

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Company, 20 IBLA 292 (May 27, 1975)

MINERALS EXPLORATION

Where application is made to lease reserved minerals in lands patented to the State of California for park or other public purposes, the regulations do not require the discovery of a workable deposit of mineral of commercial quantity and quality as a pre-condition to the issuance of the lease. Indeed, a lease affords the only authority for the conduct of exploratory operations.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

MINING CLAIMS
(See also Multiple Mineral Development Act, Surface Resources Act)

GENERALLY

When one whose application for patent for a mining claim has been rejected requests a hearing to present evidence on the controlling issues of fact involved in the rejection of the application, such request must be granted.

If mining claimants possess the essential qualifications as to citizenship, and if they peacefully entered and occupied the land and discovered a valuable mineral deposit thereon at a time when both the land and the mineral were subject to appropriation under the mining laws, and if they thereafter remained in peaceful, exclusive possession and openly worked the claim for the period prescribed by the state statute of limitations for mining claims, and expended at least the minimum amount of money prescribed by law in the improvement of the claim, they have thereby established their right to receive a patent pursuant to 30 U.S.C. § 38 (1970) notwithstanding their error in locating and recording their claim under the statute pertaining to placer locations rather than properly under the lode mining law, assuming that there has been no intervening loss of discovery.

Estate of Arthur C. W. Bowen, Deceased, 18 IBLA 379 (Jan. 30, 1975)

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated and the rights of the public preserved.

Richard B. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

GENERALLY--Continued

The authority of the Government to proceed with the determination of the validity of a mining claim is not barred by laches, because Government property is not to be disposed of contrary to law, despite any acquiescence, laches, or failure to act on the part of its officer or agents.

Montana Copper King Mining Co., et al., 20 IBLA 30 (Apr. 16, 1975)

ASSESSMENT WORK

An appeal from a decision denying a petition for deferment of annual assessment work on mining claims will be dismissed where the petitioner files evidence with its appeal showing that the assessment work was subsequently performed.

Hibernia Silver Mines, Inc., 20 IBLA 12 (Apr. 14, 1975)

COMMON VARIETIES OF MINERALS

Generally

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

In determining the marketability of a common variety of sand and gravel from a mining claim, the possibility that the material could be sold for purposes for which ordinary earth may be used may not be considered, as such purposes are not validating uses cognizable under the mining laws.

A mining claim located for a common variety of gravel prior to the Surface Resources Act of July 23, 1955, cannot be sustained as being held as a reserve for the gravel deposit where the claimants had not established a discovery under the marketability test at that time. The "reserve rule" is not a substitute for discovery. A mining claimant's desire to hold a claim in hope that there will be an increase in the market demand and price does not satisfy the marketability test.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

In order to prove that rhyolite used for building stone purposes is not a common variety of stone under sec. 3 of the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property; and (2) the unique property gives the deposit a distinct and special value. Possession of a unique property alone is not sufficient. The unique property must give the deposit a value for a purpose to which other materials are not suited or if the deposit is to be used for the same purposes as other minerals of common occurrence, it must possess some inherent property which gives it a special value for such use which

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

value is generally reflected by the fact that the deposit commands a higher price in the marketplace or produces a substantially higher profit.

Common varieties of a particular mineral material do not have to be physically alike or equally desirable for a given purpose. When the evidence shows that other deposits occur commonly in the area and are similarly used, the fact that the subject deposit has qualities which are particularly well suited to that purpose does not, of itself, alter its essential character as a common variety material.

A deposit of rhyolite cannot be determined to be an uncommon variety of mineral solely on the basis of its location, even though the location gives the deposit a competitive advantage due to proximity to market, as location is not a unique property inherent in the deposit but is only an extrinsic factor.

United States v. Gerald D. Heden, et al., 19 IBLA 326 (Apr. 7, 1975)

Where claims were located for common varieties of sand and gravel as well as other minerals prior to July 23, 1955, it must be shown that because of proximity to market, bona fides in development, the existence of present demand, and other relevant factors, the sand and gravel together with the other minerals could have been sold at that time for a reasonable profit. In the absence of such a showing, the value of the sand and gravel may not now be considered in determining whether a discovery of a valuable mineral deposit has been made, as the value of a nonlocatable deposit may not be added to that of a locatable deposit to establish a discovery.

A lack of sales of a mineral of widespread occurrence, such as sand and gravel, may raise a presumption that there was no demand for the mineral during that time, and, hence, the material was not marketable. The presumption may be overcome with credible evidence to the contrary or by bona fides in development.

United States v. C. V. Hallenbeck, et al., 21 IBLA 296 (Aug. 11, 1975)

Where the Government has presented a prima facie case that a claimed mineral is a common variety pumice and further that the pumice was not marketable at a profit as of July 23, 1955, the burden of showing by a preponderance of the evidence either that the mineral is an uncommon variety or that it was marketable as of July 23, 1955, devolves upon the mineral claimants.

A deposit of pumice is not an uncommon variety of pumice merely because it can presently be mined, removed and marketed at a profit. Rather, a mining claimant who asserts discovery of pumice must show that the deposit has a distinct and special value over other marketable deposits of pumice.

United States v. C. Fred Underwood, et al., 22 IBLA 62 (Sept. 18, 1975)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Special Value

Building stone which is not suitable for any uses other than those to which ordinary building stone is put, and which does not command a higher market price than other similar building stone, may be considered locatable after July 23, 1955, as an uncommon variety of stone, only if it has a unique property which imparts a special value to the stone reflected in higher price or a substantially greater profit to the locator due to reduced overhead and costs of extraction and processing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

Unique Property

Building stone which is not suitable for any uses other than those to which ordinary building stone is put, and which does not command a higher market price than other similar building stone, may be considered locatable after July 23, 1955, as an uncommon variety of stone, only if it has a unique property which imparts a special value to the stone reflected in higher price or a substantially greater profit to the locator due to reduced overhead and costs of extraction and processing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

CONTESTS

When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

When a government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made; the Government's mineral examiner is not obliged to explore beyond the current workings of a mining claimant in attempting to verify a discovery.

United States v. Herbert Clark, 18 IBLA 368 (Jan. 30, 1975)

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

MINING CLAIMS--Continued

CONTESTS--Continued

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, any issue in doubt as to discovery raised by the evidence must be resolved against the party having the risk of nonpersuasion, the mining claimant. If a mining claimant fails to show by a preponderance of the evidence as to such issue that there has been a discovery of a valuable mineral deposit he has not satisfied his burden of proof and an Administrative Law Judge must declare the claim invalid, rather than leave the question of the claim's validity unresolved.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

The fact that much of the evidence that supports a mining claimant's position in a mining claim contest is presented by the Government, rather than the claimant, does not mean that the claimant's burden of proof has not been met, because the entire evidentiary record must be considered in weighing the evidence and not simply the claimant's evidence alone.

Where the preponderance of the evidence in a mining claim contest supports an Administrative Law Judge's dismissal of a contest complaint, that decision will not be disturbed upon appeal.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

In a mining contest a mining claimant is the true proponent under the Administrative Procedure Act, 5 U.S.C. § 556(d), of a rule or order that he has complied with the mining laws, and he has the ultimate burden of proof -- the risk of nonpersuasion -- to show by a preponderance of the evidence that there is a valuable mineral deposit on the claim, when the Government has made a prima facie case of lack of such a discovery.

MINING CLAIMS--Continued

CONTESTS--Continued

An Administrative Law Judge has a duty to conduct a hearing in such a manner that all available relevant facts in a mining contest will be adduced. He should take special care to do so where a party is without counsel and there is confusion concerning the status of purported tendered evidence.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the result that the claimants were thereby induced to do so, to their ultimate damage.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

The Department of the Interior has jurisdiction, in proper proceedings, to determine the validity of mining claims on federal lands.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

United States v. A. B. Fleming, et al., 20 IBLA 83 (Apr. 24, 1975)

A mining claim is a claim to property which may not be declared invalid except in accordance with due process of law. Due process consists of proper notice and opportunity for an agency hearing in accordance with the Administrative Procedure Act,

MINING CLAIMS--Continued

CONTESTS--Continued

and it suffices if the claimant is properly notified and afforded the opportunity to be heard. But there is no requirement that a hearing be held where the contestee fails to avail himself of the opportunity for a hearing within the time provided.

Under the Department of Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. The Secretary of the Interior is without authority to waive the rules to permit the late filing of the answer.

United States v. James R. and Sammy B. Ragsdale, 20 IBLA 348 (June 11, 1975)

When the Government contests a mining claim on a charge of no discovery it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

United States v. Charles J. MacIver, et al., 20 IBLA 352 (June 11, 1975)

In a mining claim contest, the claimant is the proponent of the rule or order that he has complied with the provisions of the mining law, which have been brought into issue, and the Government bears the burden only of presenting a prima facie case of invalidity; the claimant must then preponderate on the issues litigated.

Where the hearing record in a mining claim contest is unsatisfactory, a "stipulation" on another issue may have prevented the introduction of evidence relevant to the issue on appeal, the parties will not be unduly burdened, and further proceedings will likely be productive of relevant evidence, the Board may remand the case for additional hearing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are

MINING CLAIMS--Continued

CONTESTS--Continued

not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. C. V. Ballenbeck, et al., 21 IBLA 296 (Aug. 11, 1975)

When the Government contests a mining claim and establishes a prima facie case that contestee has not made a discovery of a locatable mineral deposit, the burden devolves on contestee to establish by a preponderance of the evidence that the claim has been validated by the discovery of a locatable mineral deposit.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

Where the answer to a mining contest complaint denying the charges is timely filed by one contestee, but is untimely filed by all other contestees, the charges as to those contestees filing untimely answers will be taken as admitted and their interests in the mining claims will be declared null and void. The contestee who filed a timely answer is entitled to a hearing as to the validity of the claims.

United States v. Albert S. Hunter, et al., 22 IBLA 28 (Sept. 10, 1975)

Where the Government has presented a prima facie case that a claimed mineral is a common variety pumice and further that the pumice was not marketable at a profit as of July 23, 1955, the burden of showing by a preponderance of the evidence either that the mineral is an uncommon variety or that it was marketable as of July 23, 1955, devolves upon the mineral claimants.

United States v. C. Fred Underwood, et al., 22 IBLA 62 (Sept. 18, 1975)

DETERMINATION OF VALIDITY

When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

When a government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made; the Government's mineral examiner is not obliged to explore beyond the current workings of a mining claimant in attempting to verify a discovery.

United States v. Herbert Clark, 18 IBLA 368 (Jan. 30, 1975)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The Department of the Interior has the authority and the duty to contest mining claims which it believes are invalid, notwithstanding that the claims are located in a National Forest and the Forest Service has no objection to approval of a patent application.

Estate of Arthur C. W. Bowen, Deceased, 18 IBLA 379 (Jan. 30, 1975)

On petition for reconsideration, the assertion of rights to a mining claim under an Aug. 1968 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in Oct. 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970) (2) there are no intervening rights (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 et seq., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

DETERMINATION OF VALIDITY--Continued

A discovery exists where minerals have been found within the limits of a claim and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

In order to prove that rhyolite used for building stone purposes is not a common variety of stone under sec. 3 of the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property; and (2) the unique property gives the deposit a distinct and special value. Possession of a unique property alone is not sufficient. The unique property must give the deposit a value for a purpose to which other materials are not suited or if the deposit is to be used for the same purposes as other minerals of common occurrence, it must possess some inherent property which gives it a special value for such use which value is generally reflected by the fact that the deposit commands a higher price in the marketplace or produces a substantially higher profit.

A deposit of rhyolite cannot be determined to be an uncommon variety of mineral solely on the basis of its location, even though the location gives the deposit a competitive advantage due to proximity to market, as location is not a unique property inherent in the deposit but is only an extrinsic factor.

United States v. Gerald D. Heden, et al., 19 IBLA 326 (Apr. 7, 1975)

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the result that the claimants were thereby induced to do so, to their ultimate damage.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

The Department of the Interior has jurisdiction, in proper proceedings, to determine the validity of mining claims on federal lands.

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

United States v. A. B. Fleming, et al., 20 IBLA 83 (Apr. 24, 1975)

Marketability of mineral material is not the sole test of the validity of a mining claim. Profitable sales of mineral material for non-validating uses cannot be used in determining the validity of a mining claim; the claimant must meet the prudent man-marketability test in a market for which the material is locatable.

Bog iron ore, used as a soil conditioner or soil amendment, is not a locatable mineral deposit in the absence of a showing that it meets the test of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), i.e., it is found to be not just a physical amendment to the soil but a chemical amendment which alters and improves soil or plant chemistry.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without opportunity for hearing.

Hathern Lewis Stacy, 23 IBLA 166 (Dec. 24, 1975)

DISCOVERY

Generally

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Herbert Clark, 18 IBLA 368 (Jan. 30, 1975)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A discovery exists where minerals have been found within the limits of a claim and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

United States v. Gerald D. Heden, et al., 19 IBLA 326 (Apr. 7, 1975)

To determine whether there has been a discovery of a valuable mineral deposit within a lode claim there must be exposed within the limits of the claim a vein or lode bearing mineral of such quality and quantity as would induce a prudent man to expend his time and means with the expectation of developing a valuable mine.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

United States v. A. B. Fleming, et al., 20 IBLA 83 (Apr. 24, 1975)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a profitable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Charles J. MacIver, et al., 20 IBLA 352 (June 11, 1975)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. C. V. Hallenbeck, et al., 21 IBLA 296 (Aug. 11, 1975)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

When the Government contests a mining claim and establishes a prima facie case that contestee has not made a discovery of a locatable mineral deposit, the burden devolves on contestee to eatablish by a preponderance of the evidence that the claim has been validated by the discovery of a locatable mineral deposit.

Marketability of mineral material is not the sole test of the validity of a mining claim. Profitable sales of mineral material for non-validating uses cannot be used in determining the validity of a mining claim; the claimant must meet the prudent man-marketability test in a market for which the material is locatable.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

Under proper circumstances the Government may establish a prima facie case of lack of discovery of a valuable mineral deposit on a mining claim, even though the Government mineral examiner was not physically present on such claim. Where there is no evidence to rebut the prima facie case, a mining claim may properly be declared null and void.

United States v. Long Beach Salt Company, 23 IBLA 41 (Dec. 2, 1975)

Geologic Inference

Nonrepresentative mineral samples alone cannot prove the existence of valuable mineralization exposed within a vein. If, however, other evidence establishes such mineralization, the samples may be given some weight to support geological inferences of the value of a lode mining claim.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

Marketability

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

The marketability refinement of the prudent man test of discovery requires that the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the mineral deposit is of such value that it can be mined, removed and disposed of at a profit.

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

In making a prima facie case in a mining contest involving a common variety of material, it is only essential for the Government to establish that the contestees had not prior to July 23, 1955, met the criteria used in determining marketability at a profit. It is not essential that the Government's evidence prove conclusively that the material could not, in fact, be marketed at a profit, but only that it was not sold or marketed. The Government is not required to do the discovery work upon a mining claim; it is only necessary that the exposed areas of a claim and the workings on a claim be examined to verify if a discovery has been made by the mining claimant.

In determining the marketability of a common variety of sand and gravel from a mining claim, the possibility that the material could be sold for purposes for which ordinary earth may be used may not be considered, as such purposes are not validating uses cognizable under the mining laws.

A mining claim located for a common variety of gravel prior to the Surface Resources Act of July 23, 1955, cannot be sustained as being held as a reserve for the gravel deposit where the claimants had not established a discovery under the marketability test at that time. The "reserve rule" is not a substitute for discovery. A mining claimant's desire to hold a claim in hope that there will be an increase in the market demand and price does not satisfy the marketability test.

A conjectural opinion on the possibility of a mining claimant's ability to market a common variety of gravel at a profit prior to July 23, 1955, is not credible evidence of marketability where specific evidence tends to show that development of a mining operation at that time was not then warranted by the market place conditions.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

A lack of sales of a mineral of widespread occurrence, such as sand and gravel, may raise a presumption that there was no demand for the mineral during that time, and, hence, the material was not marketable. The presumption may be overcome with credible evidence to the contrary or by bona fides in development.

United States v. C. V. Hallenbeck, et al., 21 IBLA 296 (Aug. 11, 1975)

A bog iron ore deposit does not meet the prudent man-marketability test where the evidence shows that contestee could only develop the iron deposit for sale for metallurgical uses after further exploration to establish a higher grade or greater tonnage of ore, or upon future favorable developments in the iron ore market.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975)
82 I.D. 414

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

Where the Government has presented a prima facie case that a claimed mineral is a common variety pumice and further that the pumice was not marketable at a profit as of July 23, 1955, the burden of showing by a preponderance of the evidence either that the mineral is an uncommon variety or that it was marketable as of July 23, 1955, devolves upon the mineral claimants.

A deposit of pumice is not an uncommon variety of pumice merely because it can presently be mined, removed and marketed at a profit. Rather, a mining claimant who asserts discovery of pumice must show that the deposit has a distinct and special value over other marketable deposits of pumice.

United States v. C. Fred Underwood, et al., 22 IBLA 62 (Sept. 18, 1975)

HEARINGS

When one whose application for patent for a mining claim has been rejected requests a hearing to present evidence on the controlling issues of fact involved in the rejection of the application, such request must be granted.

Estate of Arthur C. W. Bowen, Deceased, 18 IBLA 379 (Jan. 30, 1975)

While a mining contest is within the jurisdiction of an Administrative Law Judge, he may reopen the hearing for the production of further evidence before he makes his decision.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was

MINING CLAIMS--Continued

HEARINGS--Continued

open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970) (2) there are no intervening rights (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 et seq., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

Evidence submitted on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing in a mining contest may be ordered where the particular circumstances so warrant it.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted. However, such evidence will only be considered if accompanied by a cogent explanation of why it was not tendered at the hearing.

United States v. Charles J. MacIver, et al., 20 IBLA 352 (June 11, 1975)

United States v. C. V. Hallenbeck, et al., 21 IBLA 296 (Aug. 11, 1975)

In a mining claim contest, the claimant is the proponent of the rule or order that he has complied with the provisions of the mining law, which have been brought into issue, and the Government bears the burden only of presenting a prima facie case of invalidity; the claimant must then preponderate on the issues litigated.

MINING CLAIMS--Continued

HEARINGS--Continued

Where the hearing record in a mining claim contest is unsatisfactory, a "stipulation" on another issue may have prevented the introduction of evidence relevant to the issue on appeal, the parties will not be unduly burdened, and further proceedings will likely be productive of relevant evidence, the Board may remand the case for additional hearing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 et seq.(1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

United States v. Long Beach Salt Company, 23 IBLA 41 , (Dec. 2, 1975)

LANDS SUBJECT TO

On petition for reconsideration, the assertion of rights to a mining claim under an Aug. 1968 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in Oct. 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

Where land was subject to a mining claim at the time a small tract classification order withdrew the land from mineral entry and the mining claim was thereafter declared null and void, a subsequent transferee of the mining claim has no standing to object to the order classifying the land under the Small Tract Act.

Richard B. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970) (2) there are no intervening rights (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 et seq., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Sec. 8 of the Act of Apr. 23, 1904, 33 Stat. 302, providing for survey and allotment of lands within the Flathead Indian Reservation, excepts from mineral entry those lands classified as "timber land" by a Presidential Commission, and the Department of the Interior has no authority to overturn such classification and declare the "timber lands" more valuable as "mineral lands."

Lands set apart as an Indian reservation cease to be a part of the public domain. A mining claim located on Indian lands not opened to entry is void ab initio.

Montana Copper King Mining Co., et al., 20 IBLA 30 (Apr. 16, 1975)

Mining claims are properly declared null and void ab initio where they are located on land which, on the date of location, was included in an application for withdrawal which previously had been noted on land office records.

John Boyd Parsons, 22 IBLA 328 (Nov. 10, 1975)

A determination that land was known to be valuable for minerals leasable under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 et seq.(1970), at the time mining claims for such land were located, will be upheld where there has been a hearing on the question and the mining claimant has failed to produce evidence to overcome such a classification.

Mining claims located in 1933 under the general mining laws, 30 U.S.C. § 21 et seq.(1970), on lands known to be valuable for minerals subject to leasing under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 et seq. (1970), are null and void ab initio because in 1933 such lands were not open to location and disposition under the mining laws; however, since the passage of the Act of Aug. 12, 1953, 30 U.S.C. § 501 (1970), and the Multiple Mineral Development Act of Aug. 13, 1954, 30 U.S.C. § 521 et seq. (1970), it is possible to locate a mining claim on lands covered by a mineral permit or lease, or application therefor, or which are known to be valuable for leasable minerals, but the leasable minerals are reserved to the United States.

United States v. Long Beach Salt Company, 23 IBLA 41 (Dec. 2, 1975)

LOCATABILITY OF MINERAL

Generally

When the Government contests a mining claim and establishes a prima facie case that contestee has not made a discovery of a locatable mineral deposit, the burden devolves on contestee to establish by a preponderance of the evidence that the claim has been validated by the discovery of a locatable mineral deposit.

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL--Continued

Generally--Continued

Marketability of mineral material is not the sole test of the validity of a mining claim. Profitable sales of mineral material for non-validating uses cannot be used in determining the validity of a mining claim; the claimant must meet the prudent man-marketability test in a market for which the material is locatable.

Bog iron ore, used as a soil conditioner or soil amendment, is not a locatable mineral deposit in the absence of a showing that it meets the test of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), i.e., it is found to be not just a physical amendment to the soil but a chemical amendment which alters and improves soil or plant chemistry.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

LOCATION

If mining claimants possess the essential qualifications as to citizenship, and if they peacefully entered and occupied the land and discovered a valuable mineral deposit thereon at a time when both the land and the mineral were subject to appropriation under the mining laws, and if they thereafter remained in peaceful, exclusive possession and openly worked the claim for the period prescribed by the state statute of limitations for mining claims, and expended at least the minimum amount of money prescribed by law in the improvement of the claim, they have thereby established their right to receive a patent pursuant to 30 U.S.C. § 38 (1970) notwithstanding their error in locating and recording their claim under the statute pertaining to placer locations rather than properly under the lode mining law, assuming that there has been no intervening loss of discovery.

Estate of Arthur C. W. Bowen, Deceased, 18 IBLA 379 (Jan. 30, 1975)

LODE CLAIMS

To determine whether there has been a discovery of a valuable mineral deposit within a lode claim there must be exposed within the limits of the claim a vein or lode bearing mineral of such quality and quantity as would induce a prudent man to expend his time and means with the expectation of developing a valuable mine.

United States v. Kinsley Ranch Resort, Inc., et al., 20 IBLA 14 (Apr. 16, 1975)

MINING CLAIMS--Continued

PATENT

The Department of the Interior has the authority and the duty to contest mining claims which it believes are invalid, notwithstanding that the claims are located in a National Forest and the Forest Service has no objection to approval of a patent application.

When one whose application for patent for a mining claim has been rejected requests a hearing to present evidence on the controlling issues of fact involved in the rejection of the application, such request must be granted.

If mining claimants possess the essential qualifications as to citizenship, and if they peacefully entered and occupied the land and discovered a valuable mineral deposit thereon at a time when both the land and the mineral were subject to appropriation under the mining laws, and if they thereafter remained in peaceful, exclusive possession and openly worked the claim for the period prescribed by the state statute of limitations for mining claims, and expended at least the minimum amount of money prescribed by law in the improvement of the claim, they have thereby established their right to receive a patent pursuant to 30 U.S.C. § 38 (1970) notwithstanding their error in locating and recording their claim under the statute pertaining to placer locations rather than properly under the lode mining law, assuming that there has been no intervening loss of discovery.

Estate of Arthur C. W. Bowen, Deceased, 18 IBLA 379 (Jan. 30, 1975)

Where a regulation requires that a mineral patent application be accompanied by a plat and field notes of a mineral survey executed subsequent to the date of location of the mining claim and a surveyor's report of expenditures and improvements, an application for mineral patent not accompanied by these documents is properly rejected without prejudice to applicant's right to file a proper application.

Walter Bartol, 19 IBLA 82 (Mar. 3, 1975)

RELOCATION

On petition for reconsideration, the assertion of rights to a mining claim under an Aug. 1968 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in Oct. 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

MINING CLAIMS--Continued

RELOCATION--Continued

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970) (2) there are no intervening rights (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 et seq., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

SPECIAL ACTS

If mining claimants possess the essential qualifications as to citizenship, and if they peacefully entered and occupied the land and discovered a valuable mineral deposit thereon at a time when both the land and the mineral were subject to appropriation under the mining laws, and if they thereafter remained in peaceful, exclusive possession and openly worked the claim for the period prescribed by the state statute of limitations for mining claims, and expended at least the minimum amount of money prescribed by law in the improvement of the claim, they have thereby established their right to receive a patent pursuant to 30 U.S.C. § 38 (1970) notwithstanding their error in locating and recording their claim under the statute pertaining to placer locations rather than properly under the lode mining law, assuming that there has been no intervening loss of discovery.

Estate of Arthur C. W. Bowen, Deceased, 18 IBLA 379 (Jan. 30, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

SPECIFIC MINERAL INVOLVED

Bog Iron Ore

Bog iron ore, used as a soil conditioner or soil amendment, is not a locatable mineral deposit in the absence of a showing that it meets the test

ING CLAIMS--Continued

SPECIFIC MINERAL INVOLVED--Continued

Bog Iron Ore--Continued

of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), i.e., it is found to be not just a physical amendment to the soil but a chemical amendment which alters and improves soil or plant chemistry.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

SURFACE USES

If a mining claim is located on or after July 23, 1955, it is subject, prior to the issuance of patent, to the right of the United States to manage surface resources or the surface to the extent necessary for access to adjacent land. 30 U.S.C. § 612 (1970).

J. Bernard Roberts, 21 IBLA 204 (July 30, 1975)

TITLE

Under California law, when a mining claim is purchased by a husband using community property funds, even though title is taken in the husband's name alone, a gift to the husband will not be presumed in lieu of other evidence and the wife may be considered a qualified applicant for purposes of the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970).

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

WITHDRAWN LAND

A mining claim located on lands segregated or withdrawn from mineral location at the time of location is null and void ab initio.

Richard B. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

Mining claims are properly declared null and void ab initio where they are located on land which, on the date of location, was included in an application for withdrawal which previously had been noted on land office records.

John Boyd Parsons, 22 IBLA 328 (Nov. 10, 1975)

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without opportunity for hearing.

Hathern Lewis Stacy, 23 IBLA 166 (Dec. 24, 1975)

MINING CLAIMS RIGHTS RESTORATION ACT

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

MINING OCCUPANCY ACT

GENERALLY

An application for relief under the Mining Claims Occupancy Act, 30 U.S.C. § 701 et seq. (1970), which is filed more than three years after the filing deadline of June 30, 1971, is fatally defective and cannot be considered under the Act.

John Paul Hinds, Ruth M. Hinds, 18 IBLA 385 (Jan. 31, 1975)

The determination of the extent of the relief that will be granted to a qualified applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, is committed to the discretion of the Secretary of the Interior, and where the determination to award an applicant a lifetime lease instead of a fee interest rests upon a rational basis, it will not be disturbed.

Edward W. Kirk, Beatrice Anne Kirk, Ralph Hevener, Ramona F. Hevener, 20 IBLA 156 (May 5, 1975)

The Mining Claims Occupancy Act was intended to provide relief for persons who used their mining claims as "a principal place of residence" and for whom a hardship would be visited if they were required to move from their long-established homes on invalid mining claims.

An applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, has the burden of satisfactorily showing that she and any predecessors in interest occupied valuable improvements on a mining claim as a principal place of residence for the 7-year period immediately preceding July 23, 1962. A mere conclusive statement that she has so used the tract is not sufficient. Where specific factual assertions demonstrate only intermittent use, an application is properly rejected.

Catherine K. Blythe, 21 IBLA 217 (July 31, 1975)

CONVEYANCES

Under 30 U.S.C. § 703 (1970), where land applied for under the Mining Claims Occupancy Act is withdrawn in aid of a governmental unit other than the Department of the Interior, the Secretary may convey an interest in the land only with the consent of the head of the governmental unit concerned.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

MINING OCCUPANCY ACT--Continued

PRINCIPAL PLACE OF RESIDENCE

The Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970), only requires that valuable improvements on an unpatented mining claim constitute a principal place of residence for a qualified applicant, not that such be the principal place of residence of the applicant.

Under the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970), where the record includes a statement as to a principal place of residence which conflicts with a more detailed statement made under oath by the same person, the matter may be remanded for hearing in order to resolve the conflict and protect the rights of a third party.

For purposes of the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970), under certain circumstances a principal place of residence of minor children and wife may be considered a principal place of residence of the father-husband.

Under the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970), where a couple owns no other residence, a principal place of residence held by a disabled husband, for reasons of health, may be considered a principal place of residence of his wife, even though she is customarily away from the mining claim during the week in order to work elsewhere.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

An applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, has the burden of satisfactorily showing that she and any predecessors in interest occupied valuable improvements on a mining claim as a principal place of residence for the 7-year period immediately preceding July 23, 1962. A mere conclusive statement that she has so used the tract is not sufficient. Where specific factual assertions demonstrate only intermittent use, an application is properly rejected.

Catherine R. Blythe, 21 IBLA 217 (July 31, 1975)

QUALIFIED APPLICANT

In order for an applicant to qualify for a conveyance under the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970), he must show that as of Oct. 23, 1962, he was a residential occupant-owner of valuable improvements in an unpatented mining claim which constituted a principal place of residence for him and his predecessors in interest for not less than seven years prior to July 23, 1962.

Under California law, when a mining claim is purchased by a husband using community property funds, even though title is taken in the husband's name alone, a gift to the husband will not be presumed in lieu of other evidence and the wife may be considered a qualified applicant for purposes of the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970).

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

MINING OCCUPANCY ACT--Continued

QUALIFIED APPLICANT--Continued

One alleging that he is a "qualified applicant" under the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 et seq. (1970), must file a timely application in his own name to be eligible for the relief provided by the Act. Where a son who may have been qualified under the Act does not file timely, but an application is filed by his mother who is record title owner in her own name, that application cannot be considered to have been made on behalf of the son even though he may be the equitable owner of the claim on the basis of being the beneficiary of an oral trust in the claim created by his mother and (now deceased) father at the time they purchased the claim.

An application filed under the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 et seq. (1970), is properly rejected on the basis that the applicant is not qualified for relief under the Act where the record shows that the applicant did not live on the claim or use it as a principal place of residence during the qualifying period of time set forth in the Act.

Jessie A. Brown, 23 IBLA 23 (Dec. 1, 1975)

MULTIPLE MINERAL DEVELOPMENT ACT

GENERALLY

Mining claims located in 1933 under the general mining laws, 30 U.S.C. § 21 et seq.(1970), on lands known to be valuable for minerals subject to leasing under the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 et seq. (1970), are null and void ab initio because in 1933 such lands were not open to location and disposition under the mining laws; however, since the passage of the Act of Aug. 12, 1953, 30 U.S.C. § 501 (1970), and the Multiple Mineral Development Act of Aug. 13, 1954, 30 U.S.C. § 521 et seq. (1970), it is possible to locate a mining claim on lands covered by a mineral permit or lease, or application therefor, or which are known to be valuable for leasable minerals, but the leasable minerals are reserved to the United States.

United States v. Long Beach Salt Company, 23 IBLA 41 (Dec. 2, 1975)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

ENVIRONMENTAL STATEMENTS

Where by final judgment a court has determined that an environmental impact statement must be filed under 42 U.S.C. § 4332 (1970) according to a particular schedule for the grazing lease program in a particular area, such an approved schedule will be followed by the Department.

Sidney Brooks, et al., 22 IBLA 177 (Sept. 30, 1975)

NAVAL PETROLEUM RESERVES

Where an oil and gas lease offer for public lands within one mile of the exterior boundaries of a naval petroleum reserve is rejected because the Department of the Navy recommends against the leasing of the land despite the Geological Survey's determination that operations on the subject land would not adversely affect the naval reserve through drainage from known productive horizons, the decision rejecting the lease offer will be reversed. The recommendations of the federal agency exercising jurisdiction over a naval petroleum reserve, while important, are not conclusive. The final determination rests with the Department, and where the Geological Survey after full consideration of pertinent technical considerations recommends leasing, a lease will issue.

R. Garvin Berry, Jr., 18 IBLA 331 (Jan. 9, 1975)

NAVIGABLE WATERS

An application for a lease of geothermal resources within a riverbed not under jurisdiction of the United States is properly rejected.

Milan S. Papulak, 19 IBLA 139 (Mar. 7, 1975)

NOTICE

GENERALLY

Sec. 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

CONSTRUCTIVE NOTICE

Published notice of a proposed state selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

NOTICE--Continued

CONSTRUCTIVE NOTICE--Continued

Published notice of a proposed State selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

OATHS

Under the Mining Claims Occupancy Act, 30 U.S.C. §§ 701 et seq. (1970), where the record includes a statement as to a principal place of residence which conflicts with a more detailed statement made under oath by the same person, the matter may be remanded for hearing in order to resolve the conflict and protect the rights of a third party.

Dwight H. and Verna K. Huston, 21 IBLA 24 (June 16, 1975)

OIL AND GAS LEASES

GENERALLY

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970).

General Crude Oil Company, 18 IBLA 326 (Jan. 7, 1975)

No law or regulation requires the mandatory rejection of an oil and gas lease offer merely because it is held in suspense for one year. The setting of a specific time limit on the suspension of an oil and gas offer is not a determination in the exercise of the Secretary's discretionary authority of whether or not to lease the lands for oil and gas.

Justheim Petroleum Company, 18 IBLA 423 (Feb. 13, 1975)

Where the Forest Service suggests a stipulation barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where later the Forest Service agrees to a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

James A. Krumhansl, 19 IBLA 56 (Feb. 21, 1975)

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Duncan Miller, 19 IBLA 86 (Mar. 3, 1975)

When noncompetitive oil and gas lease offers are rejected by the Secretary of the Interior in the exercise of his discretion, the offers will not be held in suspense pending a future determination that the lands described in the offers should be leased.

John Oakason, Beard Oil Company, 19 IBLA 191 (Mar. 18, 1975)

Where an oil and gas lease is subject to cancellation but an assignment of the lease has been filed by one claiming protection as a bona fide purchaser in accordance with the statute and regulations, the cancellation of the lease will be stayed until it is determined whether the assignee is, in fact, entitled to take advantage of the statute and regulations affording protection to bona fide purchasers.

Dale A. Spiegel, 19 IBLA 235 (Mar. 26, 1975)

A bond for not less than $1,000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

Duncan Miller, 20 IBLA 9 (Apr. 14, 1975)

The Department of the Interior has full and final authority to determine whether or not to issue oil and gas leases. Where the lands embraced within an oil and gas lease offer contain established archaeological sites and in the opinion of the responsible Departmental officials oil and gas exploration activities would destroy or impair the sites, a lease offer is properly rejected, absent an affirmative showing on behalf of the offeror that exploration activities would not infringe upon the archaeological resources of the area.

Rosita Trujillo, 20 IBLA 54 (Apr. 24, 1975)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated Mar. 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Feb. 1975 simultaneous filing period

V. J. Malloy, 20 IBLA 327 (June 6, 1975)

A demand by the Geological Survey for prejudgment interest for delayed payment of additional royalties owed to the Government is not necessarily unenforceable in the courts because it was not asserted as a counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure.

Atlantic Richfield Company, 21 IBLA 98 (June 30, 1975) 82 I.D. 316

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extension provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

Tenneco Oil Company, Sun Oil Company, 21 IBLA 130 (July 14, 1975)

Where an oil and gas lease may be subject to cancellation, but an assignment of the lease has been filed by one claiming protection as a bona fide purchaser in accordance with the statute and regulations, action to cancel the lease will be stayed until it is determined whether the assignee is, in fact, entitled to protection of the statute and regulations afforded to bona fide purchasers.

Tiffany Trust, 21 IBLA 160 (July 21, 1975)

Gus Panos, 21 IBLA 163 (July 21, 1975)

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Bill J. Maddox, 22 IBLA 97 (Sept. 22, 1975)

ACQUIRED LANDS LEASES

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970).

In exercising its discretion to lease or not to lease oil and gas under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970), the Department may reject an oil and gas lease offer filed thereunder, where the minerals are held in trust for the Shoshone and Arapaho Indians and are leasable under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Company, 18 IBLA 326 (Jan. 7, 1975)

An oil and gas lease offer which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is properly rejected.

Judith Walker, Ginger Lawhon, 18 IBLA 410 (Feb. 10, 1975)

In a noncompetitive oil and gas lease offer for acquired lands in which the United States owns a fractional present interest, 43 CFR 3130.4-4 requires offeror to submit a statement detailing the extent of his ownership in operating rights not owned by United States, regardless of whether the United States owns 50 percent or more of operating rights.

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith, et al., 19 IBLA 162 (Mar. 14, 1975)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Company, 20 IBLA 292 (May 27, 1975)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

George H. Isbell, Jr., 20 IBLA 312 (May 30, 1975)

An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are signed.

Duncan Miller, 21 IBLA 50 (June 17, 1975)

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Frederick L. Smith, 21 IBLA 239 (Aug. 11, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with certain title information in the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Margaret Hughey Hugus, 22 IBLA 146 (Sept. 30, 1975)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Paradox Oil and Gas Company, 22 IBLA 242 (Oct. 22, 1975)

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease, or suffer rejection of the offer.

Sallie B. Sanford, 22 IBLA 289 (Oct. 30, 1975)

An applicant for an acquired lands oil and gas lease may properly be required to furnish the Bureau of Land Management with reasonable title information in the county recorder's offices as a precondition to lease issuance.

Jean Oakason, 22 IBLA 311 (Nov. 10, 1975)

When an agency with jurisdiction over acquired lands has requested a short-term suspension of oil and gas lease offers, a decision rejecting the offers may be remanded to consider processing the offers in a manner consistent with that of a similar offer for which the agency has also accepted a suspension.

Chevron Oil Company, 23 IBLA 163 (Dec. 23, 1975)

APPLICATIONS

Generally

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970).

General Crude Oil Company, 18 IBLA 326 (Jan. 7, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is properly rejected.

Judith Walker, Ginger Lawhon, 18 IBLA 410 (Feb. 10, 1975)

As a condition precedent to the issuance of an oil and gas lease, the Department of the Interior may require an applicant to accept a reasonable surface management stipulation for the protection of wildlife and watershed values.

Richard P. Cullen, 18 IBLA 414 (Feb. 10, 1975)

No law or regulation requires the mandatory rejection of an oil and gas lease offer merely because it is held in suspense for one year. The setting of a specific time limit on the suspension of an oil and gas offer is not a determination in the exercise of the Secretary's discretionary authority of whether or not to lease the lands for oil and gas.

Justheim Petroleum Company, 18 IBLA 423 (Feb. 13, 1975)

Where the Forest Service suggests a stipulation barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where later the Forest Service agrees to a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

James A. Krumhansl, 19 IBLA 56 (Feb. 21, 1975)

Where the Forest Service requests a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, based on the fact that the land is in an "inventoried roadless area," and where the Forest Service later substitutes a less restrictive stipulation, a Bureau of Land Management decision requiring the execution and filing of the roadless area stipulation will be vacated and the case will be remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

Benjamin T. Franklin, 19 IBLA 94 (Mar. 4, 1975)

Land formerly included in a canceled or relinquished lease or in a lease terminated or expired by operation of law shall be subject to filing of new lease offers only as provided in 43 CFR 3112.

Duncan Miller, 19 IBLA 188 (Mar. 18, 1975)

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Lloyd W. Levi, 19 IBLA 201 (Mar. 19, 1975)

Yolana Rockar, et al., 19 IBLA 204 (Mar. 19, 1975)

Under the policy of the Secretary of the Interior of maintaining on file oil and gas lease offers for lands in Alaska filed prior to the issuance of Public Land Order 4582 on Jan. 17, 1969, an offer which would ultimately require rejection because of the unavailability of the land at the time the offer was filed, will not be retained on file, but may be properly rejected at any time when the case is reached for adjudication.

Vance W. Phillips and Aelisa A. Burnham, 19 IBLA 211 (Mar. 21, 1975)

Oil and gas lease applications, action on which was suspended under Public Land Order 4582, 34 FR 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection applications even though the latter postdate the oil and gas lease applications; the first qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

Haruyuki Yamane, et al., 19 IBLA 320 (Apr. 7, 1975)

Under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), the first qualified applicant has a preference right to receive an oil and gas lease where the Department of the Interior has in the exercise of its discretion, determined to issue such a lease. But a lease offer does not create a vested interest where there has been no determination to lease the lands embraced in the lease offer. In the latter instance, the application for

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

a lease is a hope or expectation rather than a valid claim against the Government, and the lease offeror has acquired no rights which are violated by issuance of a patent to the State of Alaska for the lands embraced in the lease offer.

An oil and gas lease offer must be rejected when approval is given to a subsequently filed state selection embracing the same lands, including the mineral rights. Following issuance of patent to the State, the Department loses jurisdiction over the patented land.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer was formerly included in a terminated oil and gas lease, and which may be leased only in compliance with the simultaneous filing procedures set out in 43 CFR 3112.

Duncan Miller, 20 IBLA 19 (Apr. 16, 1975)

The Department of the Interior has full and final authority to determine whether or not to issue oil and gas leases. Where the lands embraced within an oil and gas lease offer contain established archaeological sites and in the opinion of the responsible Departmental officials oil and gas exploration activities would destroy or impair the sites, a lease offer is properly rejected, absent an affirmative showing on behalf of the offeror that exploration activities would not infringe upon the archaeological resources of the area.

Rosita Trujillo, 20 IBLA 54 (Apr. 24, 1975)

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The unilateral mistake of an oil and gas lease offeror in withdrawing his offer does not relieve him of the consequences of the withdrawal, which is, that the offer is terminated when the Bureau of Land Management receives the withdrawal.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

Where an application to lease land under the jurisdiction of another agency is rejected because of objections by that agency, and where on appeal that agency subsequently agrees to lease the land subject to certain special stipulations, such stipulations will be submitted to the offeror for execution.

Shell Oil Company, 20 IBLA 282 (May 27, 1975)

Oil and gas lease offers embracing lands withdrawn or reserved for any agency of the Department of Defense may not be granted without the consent of that Department. 43 U.S.C. § 158 (1970). Such lease offers must be rejected where such consent is withheld as inconsistent with the military use, and the offers may not be suspended to await the possible availability of the lands for leasing.

Mobil Oil Corporation, 20 IBLA 296 (May 27, 1975)

Drawing entry cards for simultaneous oil and gas lease offers which are incomplete will be rejected and the filing fees will be retained.

Albert E. Mitchell, III, 20 IBLA 302 (May 30, 1975)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

George H. Isbell, Jr., 20 IBLA 312 (May 30, 1975)

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated Mar. 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Feb. 1975 simultaneous filing period.

V. J. Malloy, 20 IBLA 327 (June 6, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease application covering lands in an outstanding lease, whether that lease is valid, void or voidable, must be rejected. A noncompetitive oil and gas lease offer covering lands in a known geologic structure must be rejected, such lands being subject to lease only by competitive bidding.

Duncan Miller, 21 IBLA 21 (June 16, 1975)

An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are signed.

Duncan Miller, 21 IBLA 50 (June 17, 1975)

It is the date of the ascertainment by the Geological Survey of the producing character of a structure underlying a tract of land and not the date of the pronouncement of said fact which is determinative of rights depending on whether or not the land is situated within a known geological structure (KGS). A noncompetitive oil and gas lease offer must be rejected if, at any time before a lease actually issues, the land described therein becomes within a KGS, even if the offer was filed prior to the ascertainment of the KGS.

William T. Alexander, 21 IBLA 56 (June 18, 1975)

The failure of the offeror for a noncompetitive oil and gas lease to complete that part of item 2 of the lease offer form calling for the extent of the interest of the United States in oil and gas if less than 100 percent does not by itself necessitate rejection of the offer as the offer is held to include "any and all" lands described therein and whatever mineral interest the United States owns in said lands and thus becomes an offer for whatever interest is available.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease. The only right created thereby is the right to an appropriate priority of consideration if, at the discretion of the Department, an oil and gas lease is to be issued for the land which is the subject of the offer.

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska state selection application after the application has been tentatively approved even though the offer was filed before the selection application.

C. Burglin, et al., 21 IBLA 234 (Aug. 11, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

Emily Sonnek, 21 IBLA 245 (Aug. 11, 1975)

Drawing entry cards for simultaneous oil and gas lease offers will be rejected and the filing fees retained where the applications are not made on the correct form.

John F. Brown, 21 IBLA 260 (Aug. 11, 1975)

Where the Forest Service requests imposition of a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, the case will be set aside and remanded for consideration of a less stringent stipulation which the Forest Service has agreed to in other cases arising in the same and other national forests in Utah.

G. W. Anderson, 21 IBLA 328 (Aug. 14, 1975)

An oil and gas lease offer filed in the name of a corporation is properly rejected where the offer is signed by an officer who was not shown, by the corporate qualification papers contained in the company's referenced serial number, to be one of the officers authorized to sign for the company, and the offer was not accompanied by a statement showing that he was authorized to act for the company.

Manhattan Resources, Inc., 22 IBLA 24 (Sept. 9, 1975)

A Bureau of Land Management Office has no jurisdiction to take further action on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

Land included in an oil and gas lease which terminates by operation of law for failure to pay rental timely, is subject to filing of new oil and gas lease offers only in accordance with the provisions of the regulations relating to simultaneous filing of oil and gas lease offers, and the filing of an over-the-counter lease offer will not interdict the simultaneous filing procedure as to that land.

Vern H. Bolinder, 22 IBLA 130 (Sept. 26, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Land included within an outstanding oil and gas lease is not available for leasing and an application filed for such land must be rejected.

Land, formerly in a canceled, relinquished, terminated, or expired lease, is not subject to over-the-counter filing, and may be leased only in compliance with the drawing procedure established by 43 CFR 3112.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Filing fees may be retained when drawing entry cards made on reproduced forms are rejected.

Charles J. Babington, et al., 22 IBLA 143 (Sept. 30, 1975)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Margaret Hughey Hugus, 22 IBLA 146 (Sept. 30, 1975)

On appeal from decisions rejecting oil and gas lease offers insofar as they include lands within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the lands under a no surface occupancy stipulation, and the offerors indicate they would accept such a stipulation for all the lands at issue, the decisions will be set aside and the cases remanded for consideration of issuance of leases containing no surface occupancy stipulations on the lands in the lava flow.

Houston Oil and Minerals Corporation, Leland A. Hodges, Trustee, 22 IBLA 172 (Sept. 30, 1975)

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease. The only right created thereby is the right to an appropriate priority of consideration if, at the discretion of the Department, an oil and gas lease is to be issued for the land which is the subject of the offer, but it will not preclude the filing of a subsequent state selection application, nor bar approval of the state's application and the issuance of a patent to the state.

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an over-the-counter oil and gas lease offer is rejected because the applicant did not specify which of the described tracts he wanted the offer to include, he is presumed to have applied for all the tracts. Where on appeal he asserts that he desired to lease all the described lands, the decision will be reversed.

R. O. Hearn, 22 IBLA 226 (Oct. 15, 1975)

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease, or suffer rejection of the offer.

Sallie B. Sanford, 22 IBLA 289 (Oct. 30, 1975)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Connie Mull, 22 IBLA 307 (Nov. 10, 1975)

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed.

Thomas Buckmann, 23 IBLA 21 (Nov. 26, 1975)

On appeal from a decision rejecting an oil and gas lease offer insofar as it includes land within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land under a no surface occupancy stipulation, and the offeror indicates he would accept such a stipulation for the land at issue, the decision will be set aside and the case remanded for consideration of issuance of a lease containing a no surface occupancy stipulation on the land in the lava flow.

Leland A. Hodges, Trustee, 23 IBLA 142 (Dec. 23, 1975)

When an agency with jurisdiction over acquired lands has requested a short-term suspension of oil and gas lease offers, a decision rejecting the offers may be remanded to consider processing the offers in a manner consistent with that of a similar offer for which the agency has also accepted a suspension.

Chevron Oil Company, 23 IBLA 163 (Dec. 23, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Amendments

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

Attorneys-in-Fact or Agents

An oil and gas lease offer signed by an attorney-in-fact for the offeror is properly rejected where it is not accompanied by a separate statement of the attorney's interest or lack of interest in the offer and the lease, if issued, as required by departmental regulation.

Southern Union Production Co., 22 IBLA 379 (Nov. 17, 1975)

Description

An oil and gas lease offer for less than 640 acres of land is properly rejected when the application fails to include adjoining, unsurveyed, nonnavigable riverbed lands which were available for leasing at the time the offer was filed.

John E. Williams, 18 IBLA 354 (Jan. 16, 1975)

No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation, or where the land is surrounded by lands not available for leasing, and where these circumstances do not exist, an offer for less than 640 acres must be rejected.

John F. Brown, 22 IBLA 50 (Sept. 16, 1975)

Where an over-the-counter oil and gas lease offer is rejected because the applicant did not specify which of the described tracts he wanted the offer to include, he is presumed to have applied for all the tracts. Where on appeal he asserts that he desired to lease all the described lands, the decision will be reversed.

R. O. Hearn, 22 IBLA 226 (Oct. 15, 1975)

Drawings

An oil and gas lease offer drawn first in a simultaneous filing is properly rejected under 43 CFR 3103.3-1 and 43 CFR 3111.1-1(e)(1) where the offer is deficient in the first year's rental by more than ten percent. The amendment of the regulations to eliminate the requirement that the advance rental must be submitted with simultaneous filings, effective Sept. 17, 1973, was of prospective effect only, and may not be invoked to cure a defect in rental payment in a simultaneously filed lease offer pending on Sept. 17, 1973.

Duncan Miller, 19 IBLA 133 (Mar. 5, 1975)

Drawing entry cards for simultaneous oil and gas lease offers which are incomplete will be rejected and the filing fees will be retained.

Albert E. Mitchell, III, 20 IBLA 302 (May 30, 1975)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

ere an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

Where a drawing was held to determine the priority of simultaneous oil and gas lease applicants and afterwards it was discovered that cards for another parcel had inadvertently been included in the drawing, the results of the drawing will stand, as all applicants in the drawing had an equal chance to win.

Verna C. Bucy, 21 IBLA 155 (July 21, 1975)

When several offers for a noncompetitive oil and gas lease are filed for the same parcel during a simultaneous filing period and all are withdrawn after the drawing but before a lease is issued, the land is not thereby made available for an over-the-counter offer but must be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

Edward M. Digneo, 22 IBLA 4 (Sept. 4, 1975)

Drawings--Continued

When a person files an offer for a noncompetitive oil and gas lease and when his agent files another offer for the same parcel on behalf of the principal, both offers must be rejected because the principal's improved chance of success made the drawing inherently unfair whether or not there has been any collusion or intent to deceive the Department.

Imre Prepeliczay, 22 IBLA 13 (Sept. 4, 1975)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

Manhattan Resources, Inc., 22 IBLA 24 (Sept. 9, 1975)

Filing fees may be retained when drawing entry cards made on reproduced forms are rejected.

Charles J. Babington, et al., 22 IBLA 143 (Sept. 30, 1975)

The successful drawee in a drawing under the special simultaneous filing procedure for noncompetitive oil and gas lease offers is automatically disqualified if he fails to pay rental within 15 days from receipt of notice that such payment is due. A statement by such a drawee that he did not receive a notice and that his office records where his oil and gas records are contained lack any copy of the rental notice is insufficient to overcome the presumptive effect of evidence that Bureau of Land Management officials mail copies of the notice of rental, a notice of stipulations to be signed, and the stipulations in the same envelope, and it is clear the envelope containing the stipulations was received at the drawee's office.

A. G. Golden, 22 IBLA 261 (Oct. 24, 1975)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

Southern Union Production Co., 22 IBLA 379 (Nov. 17, 1975)

When a person files two offers for a parcel of land in a drawing of oil and gas lease offers filed in a simultaneous lease offering, the regulation requires that the offers be rejected.

Arthur H. Davison, 23 IBLA 15 (Nov. 26, 1975)

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed.

Thomas Buckmann, 23 IBLA 21 (Nov. 26, 1975)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing

No law or regulation requires the mandatory rejection of an oil and gas lease offer merely because it is held in suspense for one year. The setting of a specific time limit on the suspension of an oil and gas offer is not a determination in the exercise of the Secretary's discretionary authority of whether or not to lease the lands for oil and gas.

Justheim Petroleum Company, 18 IBLA 423 (Feb. 13, 1975)

In a noncompetitive oil and gas lease offer for acquired lands in which the United States owns a fractional present interest, 43 CFR 3130.4-4 requires offeror to submit a statement detailing the extent of his ownership in operating rights not owned by United States, regardless of whether the United States owns 50 percent or more of operating rights.

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith, et al., 19 IBLA 162 (Mar. 14, 1975)

An oil and gas simultaneous drawing entry card is properly returned to the applicant where the record shows that it was received in the Bureau office subsequent to the terminal hour and date set forth in the notice of lands available for simultaneous filing.

Robert B. Ferguson, 20 IBLA 299 (May 27, 1975)

Drawing entry cards for simultaneous oil and gas lease offers will be rejected and the filing fees retained where the applications are not made on the correct form.

John F. Brown, 21 IBLA 260 (Aug. 11, 1975)

It is improper for the Bureau of Land Management to require an applicant having partially conflicting noncompetitive acquired lands oil and gas lease offers filed in the regular over-the-counter procedure at different times to withdraw either his senior or junior offer simply because of the conflict.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

Reinstatement

Where an over-the-counter oil and gas lease offer is rejected because the applicant did not specify which of the described tracts he wanted the offer to include, he is presumed to have applied for all the tracts. Where on appeal he asserts that he desired to lease all the described lands, the decision will be reversed.

R. O. Hearn, 22 IBLA 226 (Oct. 15, 1975)

640-acre Limitation

The Department of the Interior will issue an oil and gas lease for less than 640 acres if the amount by which the lease offer is under 640 acres is less than the amount that the inclusion of the smallest adjoining subdivision available for leasing would put it in excess of 640 acres.

Kenneth D. Kirkland, 18 IBLA 349 (Jan. 14, 1975)

An oil and gas lease offer for less than 640 acres of land is properly rejected when the application fails to include adjoining, unsurveyed, nonnavigable riverbed lands which were available for leasing at the time the offer was filed.

John E. Williams, 18 IBLA 354 (Jan. 16, 1975)

No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation, or where the land is surrounded by lands not available for leasing, and where these circumstances do not exist, an offer for less than 640 acres must be rejected.

John F. Brown, 22 IBLA 50 (Sept. 16, 1975)

Sole Party in Interest

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

Emily Sonnek, 21 IBLA 245 (Aug. 11, 1975)

An oil and gas lease offer signed by an attorney-in-fact for the offeror is properly rejected where it is not accompanied by a separate statement of the attorney's interest or lack of interest in the offer and the lease, if issued, as required by departmental regulation.

Southern Union Production Co., 22 IBLA 379 (Nov. 17, 1975)

L AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS

The assignor of an oil and gas lease is not barred from protesting against a decision approving the assignment because of his failure to appeal from an earlier decision denying the assignee's request for assignment approval but stating that approval would be permitted upon performance of certain conditions.

The failure by an oil and gas lease assignee to timely file the requisite bond as required by an Initial State Office decision cannot be relied upon by the assignor as a basis for protesting a subsequent decision which reconsiders and grants a request for assignment approval, for it is the Department alone which may assert such default as a basis for denying a subsequent assignment approval request.

When an assignment of an oil and gas lease, made prior to lease renewal, has been approved after renewal and thereafter it appears that there is a controversy whether the parties contemplated that the assignment of the base lease would extend to the renewal lease, the Department will not take action on a protest requesting rescission of the assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

The Bureau of Land Management may assert, in its discretion, failure to timely file assignment instruments as a basis for denying approval to an assignment where intervening assignees or other adverse interests are involved.

Where there is a private dispute as to the validity or effect of an oil and gas lease assignment, the Bureau of Land Management will not take action on a request for assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

James V. O'Kane, F. Kenneth Millhollen, 19 IBLA 171 (Mar. 18, 1975)

Where an oil and gas lease is subject to cancellation but an assignment of the lease has been filed by one claiming protection as a bona fide purchaser in accordance with the statute and regulations, the cancellation of the lease will be stayed until it is determined whether the assignee is, in fact, entitled to take advantage of the statute and regulations affording protection to bona fide purchasers.

Dale A. Spiegel, 19 IBLA 235 (Mar. 26, 1975)

Sec. 27 of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 187 (1970), requires that any assignment of all or any part of a lease be approved by the Department before an assignee becomes recordholder of any interest therein.

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

The Department does not give formal approval of assignments of royalty interests, but such an assignment is deemed valid if the requirements of 43 CFR 3106.4 are met.

William G. Beanland, 21 IBLA 66 (June 25, 1975)

Where an oil and gas lease may be subject to cancellation, but an assignment of the lease has been filed by one claiming protection as a bona fide purchaser in accordance with the statute and regulations, action to cancel the lease will be stayed until it is determined whether the assignee is, in fact, entitled to protection of the statute and regulations afforded to bona fide purchasers.

Tiffany Trust, 21 IBLA 160 (July 21, 1975)

Gus Panos, 21 IBLA 163 (July 21, 1975)

The requirement of 43 CFR 3106.3-1 that assignments be filed in the State Office within 90 days of their execution is directory, not mandatory, its purpose being one of Departmental convenience. Where the failure to timely file an assignment has not adversely affected rights of any third parties, such assignment may be approved.

Hughes & New Oil Company, Inc., et al., 22 IBLA 305 (Nov. 4, 1975)

BONDS

A bond for not less than $1,000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

Duncan Miller, 20 IBLA 9 (Apr. 14, 1975)

Oil and gas lease offers for lands within the Lake Mead National Recreation area are subject to the general oil and gas regulations. Bond requirements in situations, as this one, beyond the ambit of 43 CFR 3104.1-2 may not be imposed.

Robert R. Wahl, Howard Yee, 21 IBLA 262 (Aug. 11, 1975)

CANCELLATION

Where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank because

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

of uncollected funds, a decision canceling the lease will be affirmed; and the fact that the bank, after consultation with its depositor indicated that it would honor the check upon resubmission will not serve to avoid the lease cancellation where no bank error is shown.

Dale A. Spiegel, 19 IBLA 235 (Mar. 26, 1975)

A noncompetitive oil and gas lease must be canceled where the land described therein is determined by the United States Geological Survey to be within a known geological structure of a producing oil or gas field as of the date of the signing of the lease on behalf of the United States by the authorized officer.

William T. Alexander, 21 IBLA 56 (June 18, 1975)

Where a federal oil and gas lease has issued covering land which has been patented with no mineral reservation to the United States in the patent, the oil and gas lease is properly canceled as to such land.

O. D. Presley, 21 IBLA 190 (July 28, 1975)

COMMUNITIZATION AGREEMENTS

A bond for not less than $1,000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

Duncan Miller, 20 IBLA 9 (Apr. 14, 1975)

In order for a communitization agreement to qualify a lease as containing a "well capable of producing oil or gas" within the meaning of 30 U.S.C. § 188(b) (1970) and thus not subject to rental requirements, the agreement must be approved by the Secretary of the Interior.

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975)
82 I.D. 386

COMPETITIVE LEASES

Where high bids, not clearly spurious or irresponsible, tendered at a competitive sale of oil and gas leases, are rejected solely on the statement of a field official that the bids are inadequate, and no basis whatever for that conclusion is reflected in the case record, the decision will be set aside and the case will be remanded for the compilation of a proper record and re-adjudication of the acceptability of the bids.

Arkla Exploration Co., 22 IBLA 92 (Sept. 22, 1975)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The provisions of the Mineral Leasing Act for Acquired Lands, 61 Stat. 913, 30 U.S.C. § 351 et seq. (1970), and those of the Mineral Leasing Act, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1970), authorize the Secretary of the Interior to reject high bids for upland oil and gas leases based on the inadequacy of the bonus bid if such rejection has a reasonable basis in fact.

An oil and gas lease bidder appealing from the rejection of his tender on the basis of inadequacy of the bonus bid must show by substantial evidence either (1) the criteria utilized in establishing the minimum bid value failed to include all relevant considerations, or included factors that were not relevant; or (2) the criteria were incorrectly applied.

H & W Oil Co., Inc., 22 IBLA 313 (Nov. 10, 1975)

CONSENT OF AGENCY

Where the Forest Service suggests a stipulation barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where later the Forest Service agrees to a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

James A. Krumhansl, 19 IBLA 56 (Feb. 21, 1975)

Where the Forest Service requests a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, based on the fact that the land is in an "inventoried roadless area," and where the Forest Service later substitutes a less restrictive stipulation, a Bureau of Land Management decision requiring the execution and filing of the roadless area stipulation will be vacated and the case will be remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

Benjamin T. Franklin, 19 IBLA 94 (Mar. 4, 1975)

Where an application to lease land under the jurisdiction of another agency is rejected because of objections by that agency, and where on appeal that agency subsequently agrees to lease the land subject to certain special stipulations, such stipulations will be submitted to the offeror for execution.

Shell Oil Company, 20 IBLA 282 (May 27, 1975)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Frederick L. Smith, 21 IBLA 239 (Aug. 11, 1975)

Where the Forest Service requests imposition of a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, the case will be set aside and remanded for consideration of a less stringent stipulation which the Forest Service has agreed to in other cases arising in the same and other national forests in Utah.

G. W. Anderson, 21 IBLA 328 (Aug. 14, 1975)

The execution of special stipulations as a condition precedent to issuance of oil and gas leases for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the final authority for oil and gas leasing on public domain land rests in this Department.

Earl R. Wilson, 21 IBLA 392 (Aug. 27, 1975)

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Bill J. Maddox, 22 IBLA 97 (Sept. 22, 1975)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect identifiable resource values as a condition precedent to issuance of an oil and gas lease. Stipulations proposed by the Forest Service will be carefully considered by this Department, but the final decision for oil and gas leasing on public domain land rests with this Department. A "no surface occupancy" stipulation proposed in order to protect a recreation area cannot stand if it might preclude surface occupancy unreasonably beyond the boundaries of the recreation area.

Beverley Lasrich, 22 IBLA 202 (Oct. 15, 1975)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the land as a condition precedent to the issuance of the lease, or suffer rejection of the offer.

Sallie B. Sanford, 22 IBLA 289 (Oct. 30, 1975)

National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with appropriate protective stipulations, is or is not in the public interest.

Esdras K. Hartley, 23 IBLA 102 (Dec. 23, 1975)

CONTRACTS FOR SALE OF ROYALTY OIL OR GAS

The Department may not sell royalty oil to an ineligible refinery, unless the Secretary of the Interior finds that the crude oil needs of refiners eligible to purchase crude oil under 30 U.S.C. § 192 (1970), are being met in the open market.

A regulation defining "eligible refiners" under the Act of July 13, 1946, providing for the sale of Government royalty oil or gas, as owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities, is an implementation of the Act within the ambit of the Secretary of the Interior's authority to prescribe rules and regulations.

Thunderbird Resources, Inc., 20 IBLA 248 (May 16, 1975)

DISCRETION TO LEASE

The Department has discretionary authority to issue or not to issue leases under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970).

In exercising its discretion to lease or not to lease oil and gas under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970), the Department may reject an oil and gas lease offer filed thereunder, where the minerals are held in trust for the Shoshone and Arapaho Indians and

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

are leasable under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Company, 18 IBLA 326 (Jan. 7, 1975)

Where an oil and gas lease offer for public lands within one mile of the exterior boundaries of a naval petroleum reserve is rejected because the Department of the Navy recommends against the leasing of the land despite the Geological Survey's determination that operations on the subject land would not adversely affect the naval reserve through drainage from known productive horizons, the decision rejecting the lease offer will be reversed. The recommendations of the federal agency exercising jurisdiction over a naval petroleum reserve, while important, are not conclusive. The final determination rests with the Department, and where the Geological Survey after full consideration of pertinent technical considerations recommends leasing, a lease will issue.

R. Garvin Berry, Jr., 18 IBLA 331 (Jan. 9, 1975)

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area under sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

John Oakason, Beard Oil Company, 19 IBLA 191 (Mar. 18, 1975)

Under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970), the first qualified applicant has a preference right to receive an oil and gas lease where the Department of the Interior has in the exercise of its discretion, determined to issue such a lease. But a lease offer does not create a vested interest where there has been no determination to lease the lands embraced in the lease offer. In the latter instance, the application for a lease is a hope or expectation rather than a valid claim against the Government, and the lease offeror has acquired no rights which are violated by issuance of a patent to the State of Alaska for the lands embraced in the lease offer.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

The Department of the Interior has full and final authority to determine whether or not to issue oil and gas leases. Where the lands embraced within an oil and gas lease offer contain established archaeological sites and in the opinion of the responsible Departmental officials oil and

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

gas exploration activities would destroy or impair the sites, a lease offer is properly rejected, absent an affirmative showing on behalf of the offeror that exploration activities would not infringe upon the archaeological resources of the area.

Rosita Trujillo, 20 IBLA 54 (Apr. 24, 1975)

Sec. 6(b) of the Alaska Statehood Act providing for recognition of valid existing claims does not apply to an oil and gas lease offer filed pursuant to the Mineral Leasing Act of 1920. While an oil and gas lease offeror may have a right to a lease where the Department has exercised its discretion to issue a lease, and the offeror is entitled to a statutory priority right over other offerors, his application does not rise to the level of a "claim" or "right" within the savings clause of the Alaska Statehood Act where there has been no such determination to lease.

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Company, 20 IBLA 292 (May 27, 1975)

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended.

The Secretary's authority to withdraw public lands is separate from, and in addition to, the Secretary's discretionary authority under sec. 17 of the Mineral Leasing Act of 1920, as amended. Therefore, public lands which are described in a public land order as not withdrawn from leasing under the mineral leasing laws remain subject to an exercise of the Secretary's discretion under

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

sec. 17 of the Mineral Leasing Act of 1920, as amended.

T. R. Young, Jr., 20 IBLA 333 (June 11, 1975)

The prohibition in 43 CFR 3101.3-3(a)(1) against leasing for oil and gas in wildlife refuge lands, except where there is drainage, applies to areas withdrawn for waterfowl production, even though the withdrawal order did not prohibit leasing. Offers for such lands and lakebeds riparian thereto are properly rejected.

A. G. Golden, 21 IBLA 76 (June 25, 1975)

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area pursuant to sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C.A. § 1276(c) (Supp. 1975), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

Rosita Trujillo, 21 IBLA 289 (Aug. 11, 1975)

On appeal from decisions rejecting oil and gas lease offers insofar as they include lands within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the lands under a no surface occupancy stipulation, and the offerors indicate they would accept such a stipulation for all the lands at issue, the decisions will be set aside and the cases remanded for consideration of issuance of leases containing no surface occupancy stipulations on the lands in the lava flow.

Houston Oil and Minerals Corporation, Leland A. Hodges, Trustee, 22 IBLA 172 (Sept. 30, 1975)

The provisions of the Mineral Leasing Act for Acquired Lands, 61 Stat. 913, 30 U.S.C. § 351 et seq. (1970), and those of the Mineral Leasing Act, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1970), authorize the Secretary of the Interior to reject high bids for upland oil and gas leases based on the inadequacy of the bonus bid if such rejection has a reasonable basis in fact.

H & W Oil Co., Inc., 22 IBLA 313 (Nov. 10, 1975)

National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with appropriate protective stipulations, is or is not in the public interest.

Esdras K. Hartley, 23 IBLA 102 (Dec. 23, 1975)

On appeal from a decision rejecting an oil and gas lease offer insofar as it includes land within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land under a no surface occupancy stipulation, and the offeror indicates he would accept such a stipulation for the land at issue, the decision will be set aside and the case remanded for consideration of issuance of a lease containing a no surface occupancy stipulation on the land in the lava flow.

Leland A. Hodges, Trustee, 23 IBLA 142 (Dec. 23, 1975)

DRILLING

Where only preliminary steps had been taken looking toward conducting drilling operations by the expiration date of an oil and gas lease, but there were no actual drilling operations, a lease could not be extended under 30 U.S.C. § 226(e), however "primary term" of the lease in that section is defined in the regulations.

Inexco Oil Company, 20 IBLA 134 (May 5, 1975)

To qualify for a two-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well, as demonstrated by circumstances; e.g., by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

D. L. Cook, 20 IBLA 315 (June 4, 1975)

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extension provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

Tenneco Oil Company, Sun Oil Company, 21 IBLA 130 (July 14, 1975)

OIL AND GAS LEASES--Continued

DRILLING--Continued

To qualify for a two-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were being diligently prosecuted on the leasehold on the last day of the lease term, with good faith intent to complete a producing well as demonstrated by all the circumstances. Where 1) approval of the Geological Survey had not been obtained for any drilling, 2) proper bonds had not been obtained before the expiration date of the leases, and 3) an adequate environmental analysis had not been filed, drilling that did occur on the last day of the leasehold was not diligent in good faith and the lease must be held to have expired.

Daisy E. Hook, et al., 21 IBLA 147 (July 16, 1975)

EXTENSIONS

Where only preliminary steps had been taken looking toward conducting drilling operations by the expiration date of an oil and gas lease, but there were no actual drilling operations, a lease could not be extended under 30 U.S.C. § 226(e), however "primary term" of the lease in that section is defined in the regulations.

Inexco Oil Company, 20 IBLA 134 (May 5, 1975)

To qualify for a two-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well, as demonstrated by circumstances; e.g., by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

D. L. Cook, 20 IBLA 315 (June 4, 1975)

When an oil and gas lease, extended beyond the primary term because of production, no longer has a well capable of producing oil or gas in paying quantities, the lease terminates by operation of law if within 60 days after cessation of production no approved reworking or drilling operations are begun on the lease.

Estate of Anna Aronow, 20 IBLA 344 (June 11, 1975)

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extension provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

Tenneco Oil Company, Sun Oil Company, 21 IBLA 130 (July 14, 1975)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

To qualify for a two-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were being diligently prosecuted on the leasehold on the last day of the lease term, with good faith intent to complete a producing well as demonstrated by all the circumstances. Where 1) approval of the Geological Survey had not been obtained for any drilling, 2) proper bonds had not been obtained before the expiration date of the leases, and 3) an adequate environmental analysis had not been filed, drilling that did occur on the last day of the leasehold was not diligent in good faith and the lease must be held to have expired.

Daisy E. Hook, et al., 21 IBLA 147 (July 16, 1975)

FIRST QUALIFIED APPLICANT

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith, et al., 19 IBLA 162 (Mar. 14, 1975)

Oil and gas lease applications, action on which was suspended under Public Land Order 4582, 34 FR 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection applications even though the latter postdate the oil and gas lease applications; the first qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

Haruyuki Yamane, et al., 19 IBLA 320 (Apr. 7, 1975)

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Connie Mull, 22 IBLA 307 (Nov. 10, 1975)

FUTURE AND FRACTIONAL INTEREST LEASES

In a noncompetitive oil and gas lease offer for acquired lands in which the United States owns a fractional present interest, 43 CFR 3130.4-4 requires offeror to submit a statement detailing the extent of his ownership in operating rights not owned by United States, regardless of whether the United States owns 50 percent or more of operating rights.

Where an unamended senior offer for a noncompetitive fractional oil and gas lease on acquired lands is not in compliance with 43 CFR 3130.4-4, a junior offer obtains priority to extent of conflicts between competing filings, and the junior offeror's protest must be sustained.

Frederick L. Smith, et al., 19 IBLA 162 (Mar. 14, 1975)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, successfully drawn at a noncompetitive lease simultaneous drawing is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

George H. Isbell, Jr., 20 IBLA 312 (May 30, 1975)

The failure of the offeror for a noncompetitive oil and gas lease to complete that part of item 2 of the lease offer form calling for the extent of the interest of the United States in oil and gas if less than 100 percent does not by itself necessitate rejection of the offer as the offer is held to include "any and all" lands described therein and whatever mineral interest the United States owns in said lands and thus becomes an offer for whatever interest is available.

An acquired lands lease offer for land in which the United States owns only a fractional mineral interest is defective and subject to rejection when the applicant fails to accompany his offer with the statement required by the regulations showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror subsequently submits his statement regarding ownership of operating rights prior to a final decision rejecting the offer, the defect may be considered cured with priority of filing as of the time the statement was filed.

John Oakason, Jean Oakason, 21 IBLA 185 (July 25, 1975)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Margaret Hughey Hugus, 22 IBLA 146 (Sept. 30, 1975)

KNOWN GEOLOGICAL STRUCTURE

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Where the Geological Survey has determined that any part of the lands described in a noncompetetive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1), and to furnish a lease bond as required by 43 CFR 3104.1.

Duncan Miller, 19 IBLA 86 (Mar. 3, 1975)

The effective date of a determination that lands are within a known geologic structure of a producing oil and gas field, within the meaning of 30 U.S.C. § 226(b) (1970) and 43 CFR 3100.7-3, is the date of the ascertainment of the facts supporting the determination. After that date the Bureau of Land Management has no authority to issue an oil and gas lease pursuant to the noncompetitive lease provisions of the Mineral Leasing Act of 1920, 30 U.S.C. § 226(c) (1970).

The assertion that the Geological Survey has followed a different practice in classifying lands as within a known geologic structure on other lands is relevant insofar as it may show that the lands at issue were erroneously classified as presumptively productive, but a showing of the difference in practice would not by itself prove error.

A party challenging a determination that lands are within a known geologic structure has the burden of making a clear and definite showing of error in the determination; material indicating that the geologic formation at issue is irregular in quality and productivity does not constitute a showing that the lands are not presumptively productive, i.e., that the lands are not within the known or inferred limits of the multiple and overlapping producing intervals involved.

When an appellant asserts facts which do not on their face sustain the contentions on appeal, this Board will deny a request for a hearing to determine the asserted issues of fact. 43 CFR 4.415.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (Mar. 5, 1975)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGICAL STRUCTURE--Continued

A bond for not less than $1,000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

Duncan Miller, 20 IBLA 9 (Apr. 14, 1975)

It is the date of the ascertainment by the Geological Survey of the producing character of a structure underlying a tract of land and not the date of the pronouncement of said fact which is determinative of rights depending on whether or not the land is situated within a known geological structure (KGS). A noncompetitive oil and gas lease offer must be rejected if, at any time before a lease actually issues, the land described therein becomes within a KGS, even if the offer was filed prior to the ascertainment of the KGS.

A noncompetitive oil and gas lease must be canceled where the land described therein is determined by the United States Geological Survey to be within a known geological structure of a producing oil or gas field as of the date of the signing of the lease on behalf of the United States by the authorized officer.

One who attacks a determination by the Geological Survey that lands are situated within the known geological structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

An addition may be made to an existing known geological structure on the basis of drill stem test information which gives rise to the reasonable inference that a producing reservoir extends under the land included in the addition. It is not necessary that the well from which the information is derived be completed to a producing status before such conclusion is reached where the test information discloses the presence of two reservoirs which are present and productive in the adjoining producing field.

William T. Alexander, 21 IBLA 56 (June 18, 1975)

LANDS SUBJECT TO

Where an oil and gas lease offer for public lands within one mile of the exterior boundaries of a naval petroleum reserve is rejected because the Department of the Navy recommends against the leasing of the land despite the Geological Survey's determination that operations on the subject land would not adversely affect the naval reserve through drainage from known productive horizons, the decision rejecting the lease offer will be reversed. The recommendations of the federal agency exercising jurisdiction over a naval petroleum reserve, while important, are not conclusive. The final determination rests with the Department, and where the Geological Survey after full consideration of pertinent technical considerations recommends leasing, a lease will issue.

R. Garvin Berry, Jr., 18 IBLA 331 (Jan. 9, 1975)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Land formerly included in a canceled or relinquished lease or in a lease terminated or expired by operation of law shall be subject to filing of new lease offers only as provided in 43 CFR 3112.

Duncan Miller, 19 IBLA 188 (Mar. 18, 1975)

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area under sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

John Oakason, Beard Oil Company, 19 IBLA 191 (Mar. 18, 1975)

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Lloyd W. Levi, 19 IBLA 201 (Mar. 19, 1975)

Yolana Rockar, et al., 19 IBLA 204 (Mar. 19, 1975)

Under the policy of the Secretary of the Interior of maintaining on file oil and gas lease offers for lands in Alaska filed prior to the issuance of Public Land Order 4582 on Jan. 17, 1969, an offer which would ultimately require rejection because of the unavailability of the land at the time the offer was filed, will not be retained on file, but may be properly rejected at any time when the case is reached for adjudication.

An oil and gas offer, for lands in a terminated or relinquished lease, must be filed in compliance with the simultaneous filing procedure in 43 CFR 3112. If such an offer is not so filed, it is properly rejected.

Vance W. Phillips and Aelisa A. Burnham, 19 IBLA 211 (Mar. 21, 1975)

The Mineral Leasing Act of 1920 is not applicable to lands of the Wind River Indian Reservation which were ceded by the Indians to the United States in trust for disposition but were subsequently restored to tribal ownership. Such lands may be leased only under the Act of May 11, 1938, 25 U.S.C. § 396a et seq.

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The Mineral Leasing Act of 1920 is not applicable to the ceded but undisposed of lands of the Wind River Indian Reservation. Such lands may be leased only under the Act of Aug. 21, 1916, 39 Stat. 519.

General Crude Oil Company, 19 IBLA 245 (Mar. 28, 1975)

Oil and gas lease applications, action on which was suspended under Public Land Order 4582, 34 FR 1025 (1969), are properly rejected when the lands are subsequently patented to the State of Alaska under selection applications even though the latter postdate the oil and gas lease applications; the first qualified oil and gas lease applicant has no right or interest in the land applied for which is protected by the savings clauses of the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

Haruyuki Yamane, et al., 19 IBLA 320 (Apr. 7, 1975)

A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer was formerly included in a terminated oil and gas lease, and which may be leased only in compliance with the simultaneous filing procedures set out in 43 CFR 3112.

Duncan Miller, 20 IBLA 19 (Apr. 16, 1975)

An offer for an oil and gas lease under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

Shell Oil Company, 20 IBLA 292 (May 27, 1975)

Oil and gas lease offers embracing lands withdrawn or reserved for any agency of the Department of Defense may not be granted without the consent of that Department. 43 U.S.C. § 158 (1970). Such lease offers must be rejected where such consent is withheld as inconsistent with the military use, and the offers may not be suspended to await the possible availability of the lands for leasing.

Mobil Oil Corporation, 20 IBLA 296 (May 27, 1975)

"Waterfowl production areas" are within the meaning of "wildlife refuge lands" in 43 CFR 3101.3-3(a) and, therefore, are subject to the prohibition against oil and gas leasing (except where drainage is involved) contained in 43 CFR 3101.3-3(a)(1).

T. R. Young, Jr., 20 IBLA 333 (June 11, 1975)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An oil and gas lease application covering lands in an outstanding lease, whether that lease is valid, void or voidable, must be rejected. A noncompetitive oil and gas lease offer covering lands in a known geologic structure must be rejected, such lands being subject to lease only by competitive bidding.

Duncan Miller, 21 IBLA 21 (June 16, 1975)

The prohibition in 43 CFR 3101.3-3(a)(1) against leasing for oil and gas in wildlife refuge lands, except where there is drainage, applies to areas withdrawn for waterfowl production, even though the withdrawal order did not prohibit leasing. Offers for such lands and lakebeds riparian thereto are properly rejected.

A. G. Golden, 21 IBLA 76 (June 25, 1975)

Where a federal oil and gas lease has issued covering land which has been patented with no mineral reservation to the United States in the patent, the oil and gas lease is properly canceled as to such land.

O. D. Presley, 21 IBLA 190 (July 28, 1975)

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska state selection application after the application has been tentatively approved even though the offer was filed before the selection applicaton.

C. Burglin, et al., 21 IBLA 234 (Aug. 11, 1975)

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area pursuant to sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C.A. § 1276(c) (Supp. 1975), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

Rosita Trujillo, 21 IBLA 289 (Aug. 11, 1975)

When several offers for a noncompetitive oil and gas lease are filed for the same parcel during a simultaneous filing period and all are withdrawn after the drawing but before a lease is issued, the land is not thereby made available for an over-the-counter offer but must be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

Edward M. Digneo, 22 IBLA 4 (Sept. 4, 1975)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Land included in an oil and gas lease which terminates by operation of law for failure to pay rental timely, is subject to filing of new oil and gas lease offers only in accordance with the provisions of the regulations relating to simultaneous filing of oil and gas lease offers, and the filing of an over-the-counter lease offer will not interdict the simultaneous filing procedure as to that land.

Vern H. Bolinder, 22 IBLA 130 (Sept. 26, 1975)

Land included within an outstanding oil and gas lease is not available for leasing and an application filed for such land must be rejected.

Land, formerly in a canceled, relinquished, terminated, or expired lease, is not subject to over-the-counter filing, and may be leased only in compliance with the drawing procedure established by 43 CFR 3112.

John F. Brown, 22 IBLA 133 (Sept. 26, 1975)

Where the reasons given for rejection of an oil and gas lease offer are that several archeological sites, possibly other such archeological sites, and scenic values of certain lands might be endangered by oil and gas development, but the field report relied upon does not delineate the archeological sites and fails to describe the scenic values that would be affected, the decision may be set aside and the case remanded for further investigation to determine if oil and gas leasing could be allowed with protective stipulations, or, if not, to substantiate the basis for rejection.

Phillip S. Mahoney, 22 IBLA 136 (Sept. 26, 1975)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Paradox Oil and Gas Company, 22 IBLA 242 (Oct. 22, 1975)

National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with appropriate protective stipulations, is or is not in the public interest.

Esdras K. Hartley, 23 IBLA 102 (Dec. 23, 1975)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

When an agency with jurisdiction over acquired lands has requested a short-term suspension of oil and gas lease offers, a decision rejecting the offers may be remanded to consider processing the offers in a manner consistent with that of a similar offer for which the agency has also accepted a suspension.

Chevron Oil Company, 23 IBLA 163 (Dec. 23, 1975)

NONCOMPETITIVE LEASES

The effective date of a determination that lands are within a known geologic structure of a producing oil and gas field, within the meaning of 30 U.S.C. § 226(b) (1970) and 43 CFR 3100.7-3, is the date of the ascertainment of the facts supporting the determination. After that date the Bureau of Land Management has no authority to issue an oil and gas lease pursuant to the noncompetitive lease provisions of the Mineral Leasing Act of 1920, 30 U.S.C. § 226(c) (1970).

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (Mar. 5, 1975)

When noncompetitive oil and gas lease offers are rejected by the Secretary of the Interior in the exercise of his discretion, the offers will not be held in suspense pending a future determination that the lands described in the offers should be leased.

John Oakason, Beard Oil Company, 19 IBLA 191 (Mar. 18, 1975)

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Lloyd W. Levi, 19 IBLA 201 (Mar. 19, 1975)

Yolana Rockar, et al., 19 IBLA 204 (Mar. 19, 1975)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

An oil and gas lease application covering lands in an outstanding lease, whether that lease is valid, void or voidable, must be rejected. A noncompetitive oil and gas lease offer covering lands in a known geologic structure must be rejected, such lands being subject to lease only by competitive bidding.

Duncan Miller, 21 IBLA 21 (June 16, 1975)

A noncompetitive oil and gas lease must be canceled where the land described therein is determined by the United States Geological Survey to be within a known geological structure of a producing oil or gas field as of the date of the signing of the lease on behalf of the United States by the authorized officer.

William T. Alexander, 21 IBLA 56 (June 18, 1975)

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska state selection application after the application has been tentatively approved even though the offer was filed before the selection application.

C. Burglin, et al., 21 IBLA 234 (Aug. 11, 1975)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Connie Mull, 22 IBLA 307 (Nov. 10, 1975)

PATENTED OR ENTERED LANDS

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

Lloyd W. Levi, 19 IBLA 201 (Mar. 19, 1975)

Yolana Rockar, et al., 19 IBLA 204 (Mar. 19, 1975)

An oil and gas lease offer must be rejected when approval is given to a subsequently filed state selection embracing the same lands, including the mineral rights. Following issuance of patent to the State, the Department loses jurisdiction over the patented land.

Duncan Miller, 20 IBLA 1 (Apr. 14, 1975)

OIL AND GAS LEASES--Continued

PATENTED OR ENTERED LANDS--Continued

The Department of the Interior has neither jurisdiction over nor authority to issue oil and gas leases for lands patented to the State of Alaska.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59
(Apr. 24, 1975) 82 I.D. 174

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska state selection application after the application has been tentatively approved even though the offer was filed before the selection application.

C. Burglin, et al., 21 IBLA 234 (Aug. 11, 1975)

PREFERENCE RIGHT LEASES

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59
(Apr. 24, 1975) 82 I.D. 174

PRODUCTION

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corporation, 22 IBLA 124 (Sept. 26, 1975)

An oil and gas lease on which there is no well capable of production in paying quantities will terminate by operation of law if the annual rental payments are not submitted on or before the anniversary date. A well capable of production in paying quantities on the anniversary date is one which can actually produce enough oil to exceed the cost of its extraction. Neither the production of water nor the production of meager quantities of oil, albeit with hopes for paying production at some time in the future, constitute production in paying quantities on the anniversary date of the lease.

The Columbus Corporation, 22 IBLA 270 (Oct. 30, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown, upon reconsideration of an earlier Board decision, that lessee's failure to pay the rental timely was not due to a lack of reasonable diligence. Evidence which establishes that the payment due on May 1, 1974, at the Eastern States Office, Bureau of Land Management, Silver Spring, Maryland, was mailed in Dallas, Texas, on Apr. 25, 1974, five days before the due date, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked Apr. 30, 1974.

W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (Jan. 6, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Frank J. Germano, 18 IBLA 390 (Feb. 6, 1975)

Richard V. Bowman, 19 IBLA 261 (Mar. 31, 1975)

It is proper to deny a petition for reinstatement of an oil and gas lease terminated for failure to pay rental as required by § 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Charles L. Parks, 18 IBLA 404 (Feb. 10, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence.

W. E. Hester, Jr., 18 IBLA 420 (Feb. 12, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where it is not shown that the failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence. Mistake as to the date the payment is due, misplacement of the courtesy notice, and the decease of appellant's husband some two years prior to the date payment is due, do not afford a sufficient predicate for reinstatement of an oil and gas lease.

Mary A. Christopher, 19 IBLA 53 (Feb. 21, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Reasonable diligence in sending a rental payment due on the anniversary date includes transmitting the payment so that it will normally be received in the appropriate office on the anniversary date considering the method of transmission, normal delays in handling, and the distance involved.

Failure to pay advance rentals on or before the anniversary date may be justifiable only if the reason for such failure is proximate in time to the anniversary date and may reasonably be considered to be the proximate cause of the failure to submit the payment on time.

The burden of proving that failure to pay advance rentals on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence is the obligation of the one who failed to make timely payment.

M. J. Harvey, Jr., 19 IBLA 230 (Mar. 25, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely may be reinstated only if the lessee shows by satisfactory evidence that the failure to pay the rental on or before the anniversary date was either justifiable or was not due to a lack of reasonable diligence.

Ray E. Bush, 19 IBLA 280 (Apr. 7, 1975)

An oil and gas lease, terminated by operation of law because the annual rental payment was not received until one day after the due date, may be reinstated upon proper application where the delay in payment is due to accidental injury which prevented lessee's business from being conducted in normal manner.

David Kirkland, 19 IBLA 305 (Apr. 7, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated when the lessee shows that the failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence.

Margaret C. Rose, 19 IBLA 307 (Apr. 7, 1975)

A lessee's request that its oil and gas lease be reinstated because it relied on a regulation which has been changed is properly rejected where the lease expired by operation of law at the end of its extended term and there is no statutory authority whereby it can be reinstated.

Inexco Oil Company, 20 IBLA 134 (May 5, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to lack of reasonable diligence.

Jimmy V. Bowling, 20 IBLA 146 (May 5, 1975)

An oil and gas lease terminated by operation of law for failure to pay the annual rentals on time may be reinstated where the lessee's delay in making payment was due to his seeking clarification of an illegible notice of payment sent by the Bureau of Land Management, and his action demonstrates his reliance on the notice.

Joseph E. Steger, 20 IBLA 206 (May 8, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance annual rental on time may be reinstated only when the lessee shows that his failure to pay the rental timely was either justifiable or not due to lack of reasonable diligence. The neglect of office personnel to follow appellant's instructions to make payments while he was away from his office on a combined business and vacation trip is not a predicate for either basis for relief.

Charles C. Sturdevant, 20 IBLA 280 (May 22, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing by the lessee that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Failure to raise credible reasons that illness prevented timely payment, with no other justification for late payment, requires denial of reinstatement.

Mrs. Charles H. Blake, 20 IBLA 322 (June 6, 1975)

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may not be reinstated where the failure to pay on time was due to a lack of reasonable diligence. Where a payment is sent from a town in eastern Texas to Salt Lake City, Utah, on Oct. 30, and does not arrive until after Nov. 1, and where the Post Office indicates that regular mail sent that distance would not normally arrive in two days, the lessee has not exercised reasonable diligence.

William N. Cannon, 20 IBLA 361 (June 12, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date where the petitioner has not shown either that her failure was justifiable or not due to a lack of reasonable diligence.

Faye A. Nicholas, 21 IBLA 69 (June 25, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing that failure to pay on or before the anniversary was either justifiable or not due to lack of reasonable diligence. Appellant's misinterpretation of the due date on the courtesy notice does not justify his late payment of the rent.

Norman E. Marker, 21 IBLA 144 (July 15, 1975)

The difficulties of a lessee in obtaining sufficient money to pay an oil and gas lease's advance rental is not a "justifiable" reason such as would permit the reinstatement of an oil and gas lease terminated for failure to timely pay the advance rental.

Anthony Theophilus, 21 IBLA 287 (Aug. 11, 1975)

Before relief may be granted to the lessee of a terminated oil and gas lease, he must comply with the prerequisites set forth in 30 U.S.C. § 188 (1970). The Secretary has no authority to waive such statutory prerequisites.

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental timely.

The Secretary has no authority to reinstate a terminated oil and gas lease unless the rental payment is tendered within twenty days of the due date. Such authority also does not exist if a valid oil and gas lease has been issued covering any of the lands in the terminated lease.

A Notice of Termination is sent to the lessee of a terminated oil and gas lease only if he has tendered payment of the rental within twenty days after the anniversary date.

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975)
82 I.D. 386

Where the rent for an oil and gas lease was not mailed by the lessee until 14 days after due date because the lessee was away from his residence where he received his mail and the courtesy notice of rental payment due did not receive proper attention when it arrived, rejection of the petition for reinstatement for lack of reasonable diligence or circumstances causing the neglect to be justifiable is proper.

L. P. Weiner, 21 IBLA 336 (Aug. 18, 1975)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The fact the courtesy rental notice did not come to the attention of the lessee until six days after the rental due date is not a justifiable excuse for late payment of the rental.

Levi T. Bellah, 22 IBLA 1 (Sept. 4, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

Wikoa, Inc., 22 IBLA 6 (Sept. 4, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rent on time may be reinstated only on a showing by the lessee that his failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. A failure to exercise reasonable diligence is justifiable when caused by a factor outside the control of the lessee. A lessee's personal illness does not justify late payment unless it is of such a debilitating nature that it actually prevents the lessee from posting payment. Appellant's ability to attend to other business shows that his illness did not prevent him from making timely payment of the rent.

Milan de Lany, 22 IBLA 47 (Sept. 16, 1975)

An oil and gas lease, terminated by operation of law for failure to make timely payment of the advance rental, may be reinstated only when the failure to make payment of the annual rental on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment from California to Montana the day before its due date does not constitute reasonable diligence.

Joseph Wachter, 22 IBLA 95 (Sept. 22, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only upon a showing that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Inability to pay the rent on time does not justify late payment.

Peter T. Cremer, 22 IBLA 175 (Sept. 30, 1975)

No petition for reinstatement of an oil and gas lease terminated by operation of law, 30 U.S.C. § 188(b) (1970), may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Joseph Francis, 22 IBLA 277 (Oct. 30, 1975)

Failure to pay advance rental on or before the anniversary date of an oil and gas lease may be justifiable only if the reason for such failure is proximate in time to the anniversary date and may reasonably be considered to be the proximate cause of the failure to timely submit the payment.

Phillip Stimatze, 22 IBLA 309 (Nov. 10, 1975)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Neither the absence of lessee on vacation nor non-receipt of an advance courtesy notice satisfies the statutory criteria.

Joseph M. Nowacki, 23 IBLA 148 (Dec. 23, 1975)

RELINQUISHMENTS

The unilateral mistake of an oil and gas lease offeror in withdrawing his offer does not relieve him of the consequences of the withdrawal, which is, that the offer is terminated when the Bureau of Land Management receives the withdrawal.

An original letter is not needed to withdraw a lease offer. The requirements are that the withdrawal is properly filed and the person making the withdrawal is properly identified.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

RENEWALS

Where a 20-year oil and gas lease, committed to an approved unit agreement prior to the end of its initial term in 1962 and thereby extended beyond the original term, is eliminated from the unit agreement in 1972 and its term is automatically extended for 2 years and so long thereafter as oil or gas is produced in paying quantities, such a lease is not eligible for further 10-year renewals and an application for such a renewal filed in 1974 is properly rejected.

Marathon Oil Company, Chevron Oil Company, 19 IBLA 1 (Feb. 20, 1975)

When an assignment of an oil and gas lease, made prior to lease renewal, has been approved after renewal and thereafter it appears that there is a controversy whether the parties contemplated that the assignment of the base lease would extend to the renewal lease, the Department will not take action on a protest requesting rescission of the assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

RENTALS

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown, upon reconsideration of an earlier Board decision, that lessee's failure to pay the rental

RENTALS--Continued

timely was not due to a lack of reasonable diligence. Evidence which establishes that the payment due on May 1, 1974, at the Eastern States Office, Bureau of Land Management, Silver Spring, Maryland, was mailed in Dallas, Texas, on Apr. 25, 1974, five days before the due date, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked Apr. 30, 1974.

W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (Jan. 6, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

Frank J. Germano, 18 IBLA 390 (Feb. 6, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where it is not shown that the failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence. Mistake as to the date the payment is due, misplacement of the courtesy notice, and the decease of appellant's husband some two years prior to the date payment is due, do not afford a sufficient predicate for reinstatement of an oil and gas lease.

Mary A. Christopher, 19 IBLA 53 (Feb. 21, 1975)

Where the Geological Survey has determined that any part of the lands described in a noncompetetive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1), and to furnish a lease bond as required by 43 CFR 3104.1.

Duncan Miller, 19 IBLA 86 (Mar. 3, 1975)

An oil and gas lease offer drawn first in a simultaneous filing is properly rejected under 43 CFR 3103.3-1 and 43 CFR 3111.1-1(e)(1) where the offer is deficient in the first year's rental by more than ten percent. The amendment of the regulations to eliminate the requirement that the advance rental must be submitted with simultaneous filings, effective Sept. 17, 1973, was of prospective effect only, and may not be invoked to cure a defect in rental payment in a simultaneously filed lease offer pending on Sept. 17, 1973.

Duncan Miller, 19 IBLA 133 (Mar. 5, 1975)

OIL AND CAS LEASES--Continued

RENTALS--Continued

Where the advance annual rental for an oil and gas lease was timely submitted by a personal check, but the check was erroneously dishonored by the drawee bank, the rental will be held to have been tendered when first received in the proper Bureau of Land Management Office.

Donald S. Childs, 19 IBLA 240 (Mar. 26, 1975)

It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

An oil and gas lease is automatically terminated by operation of law where an unsigned rental check is tendered prior to the anniversary date of the lease but is not signed and returned until after the anniversary date.

Richard V. Bowman, 19 IBLA 261 (Mar. 31, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely may be reinstated only if the lessee shows by satisfactory evidence that the failure to pay the rental on or before the anniversary date was either justifiable or was not due to a lack of reasonable diligence.

Ray E. Bush, 19 IBLA 280 (Apr. 7, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated when the lessee shows that the failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence.

Margaret C. Hose, 19 IBLA 307 (Apr. 7, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to lack of reasonable diligence.

Jimmy V. Bowling, 20 IBLA 146 (May 5, 1975)

An oil and gas lease terminated by operation of law for failure to pay the annual rentals on time may be reinstated where the lessee's delay in making payment was due to his seeking clarification of an illegible notice of payment sent by the Bureau of Land Management, and his action demonstrates his reliance on the notice.

Joseph E. Steger, 20 IBLA 206 (May 8, 1975)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease terminated by operation of law for failure to pay the advance annual rental on time may be reinstated only when the lessee shows that his failure to pay the rental timely was either justifiable or not due to lack of reasonable diligence. The neglect of office personnel to follow appellant's instructions to make payments while he was away from his office on a combined business and vacation trip is not a predicate for either basis for relief.

Charles C. Sturdevant, 20 IBLA 280 (May 22, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing by the lessee that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Failure to raise credible reasons that illness prevented timely payment, with no other justification for late payment, requires denial of reinstatement.

Mrs. Charles H. Blake, 20 IBLA 322 (June 6, 1975)

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may not be reinstated where the failure to pay on time was due to a lack of reasonable diligence. Where a payment is sent from a town in eastern Texas to Salt Lake City, Utah, on Oct. 30, and does not arrive until after Nov. 1, and where the Post Office indicates that regular mail sent that distance would not normally arrive in two days, the lessee has not exercised reasonable diligence.

William N. Cannon, 20 IBLA 361 (June 12, 1975)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted "apparent inefficiency of the United States Mails."

Mar-Win Development Co., 20 IBLA 383 (June 12, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing that failure to pay on or before the anniversary was either justifiable or not due to lack of reasonable diligence. Appellant's misinterpretation of the due date on the courtesy notice does not justify his late payment of the rent.

Norman E. Marker, 21 IBLA 144 (July 15, 1975)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

Wikoa, Inc., 22 IBLA 6 (Sept. 4, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rent on time may be reinstated only on a showing by the lessee that his failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. A failure to exercise reasonable diligence is justifiable when caused by a factor outside the control of the lessee. A lessee's personal illness does not justify late payment unless it is of such a debilitating nature that it actually prevents the lessee from posting payment. Appellant's ability to attend to other business shows that his illness did not prevent him from making timely payment of the rent.

Milan de Lany, 22 IBLA 47 (Sept. 16, 1975)

An oil and gas lease, terminated by operation of law for failure to make timely payment of the advance rental, may be reinstated only when the failure to make payment of the annual rental on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment from California to Montana the day before its due date does not constitute reasonable diligence.

Joseph Wachter, 22 IBLA 95 (Sept. 22, 1975)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only upon a showing that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Inability to pay the rent on time does not justify late payment.

Peter T. Creamer, 22 IBLA 175 (Sept. 30, 1975)

The successful drawee in a drawing under the special simultaneous filing procedure for noncompetitive oil and gas lease offers is automatically disqualified if he fails to pay rental within 15 days from receipt of notice that such payment is due. A statement by such a drawee that he did not receive a notice and that his office records where his oil and gas records are contained lack any copy of the rental notice is insufficient to overcome the presumptive effect of evidence that Bureau of Land Management officials mail copies of the notice of rental, a notice of stipulations to be signed, and the stipulations in the same envelope, and it is clear the envelope containing the stipulations was received at the drawee's office.

A. G. Golden, 22 IBLA 261 (Oct. 24, 1975)

RENTALS--Continued

An oil and gas lease on which there is no well capable of production in paying quantities will terminate by operation of law if the annual rental payments are not submitted on or before the anniversary date. A well capable of production in paying quantities on the anniversary date is one which can actually produce enough oil to exceed the cost of its extraction. Neither the production of water nor the production of meager quantities of oil, albeit with hopes for paying production at some time in the future, constitute production in paying quantities on the anniversary date of the lease.

Where a lessee fails to pay the annual rental on or before the anniversary date, and where the lessee knew, or should have known, that the payment was due, estoppel will not operate to relieve the lessee of the consequent automatic termination of the lease.

The Polumbus Corporation, 22 IBLA 270 (Oct. 30, 1975)

Where the deficiency in rental paid on or before the anniversary date of a lease is nominal and a notice of deficiency is sent to the lessee, the lease terminates by operation of law when the balance is not paid within 15 days from receipt of the notice or until the anniversary date, whichever is later.

No petition for reinstatement of an oil and gas lease terminated by operation of law, 30 U.S.C. § 188(b) (1970), may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Joseph Francis, 22 IBLA 277 (Oct. 30, 1975)

ROYALTIES

The minimum royalty required under an oil or gas lease following discovery, but prior to actual production, of oil or gas, must be satisfied; if advance royalties have been paid on take or pay payments made to a lessee-seller by a buyer in lieu of receiving production from the lease, they may be credited to the amount due for royalties on actual production in subsequent years, but only to the extent they are in any year in excess of the amount of the minimum royalties prior to actual production.

Generally, the Government is not estopped from demanding oil and gas lease royalty payments it is owed, even if its employees may have made prior mistakes in accepting or computing the royalty.

Gulf Oil Corp., et al., 21 IBLA 1 (June 16, 1975)

Even where statute, regulation, and the oil and gas lease itself do not specifically provide for the payment of prejudgment interest on royalties owed to the United States, such interest may be imposed by the United States; equity principles may authorize such imposition. A charge for such interest may be imposed despite

ROYALTIES--Continued

delays in processing the debtor's appeals, where the debtor assertedly relied upon an earlier Departmental decision which, only when taken out of context, would tend to support the debtor's posture.

An Oil and Gas Supervisor of the Geological Survey has authority to demand prejudgment interest based upon the failure of an oil and gas lessee to pay timely royalties owed to the Government, despite the fact that the Supervisor is an employee of the Executive Branch.

Where an oil and gas lessee appeals from a decision of an Oil and Gas Supervisor's determination that additional royalties are due to the Government, and simultaneously files a request for suspension of the ruling, which is granted by the Geological Survey "until further notice," prejudgment interest continues to accrue during the period of the suspension. This conclusion is premised on the doctrine that interest is compensation for delay in payment.

A demand by the Geological Survey for prejudgment interest for delayed payment of additional royalties owed to the Government is not necessarily unenforceable in the courts because it was not asserted as a counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure.

Atlantic Richfield Company, 21 IBLA 98 (June 30, 1975) 82 I.D. 316

In interpreting provisions of state leases which have been validated under sec. 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1335 (1970), the Department will give great weight to judicial and administrative interpretations rendered by officials of that State. Where, however, there is a conflict of opinion between state officials as to the proper interpretation of a provision of a state lease, the Department of the Interior will independently interpret that section, applying the general rules of contract construction.

Ocean Drilling & Exploration Company, Chevron Oil Company, 21 IBLA 137 (July 15, 1975)

Reasonable transportation costs of production from oil and gas leases from the field to the first available market are allocable to the Federal or Indian royalty interest.

Kerr-McGee Corporation, 22 IBLA 124 (Sept. 26, 1975)

STIPULATIONS

As a condition precedent to the issuance of an oil and gas lease, the Department of the Interior may require an applicant to accept a reasonable surface management stipulation for the protection of wildlife and watershed values.

Richard P. Cullen, 18 IBLA 414 (Feb. 10, 1975)

OIL AND GAS LEASES--Cootinued

STIPULATIONS--Continued

Where the Forest Service suggests a stipulatioo barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where later the Forest Service agrees to a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

James A. Krumhansl, 19 IBLA 56 (Feb. 21, 1975)

Where the Forest Service requests a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, based on the fact that the land is in an "inventoried roadless area," and where the Forest Service later substitutes a less restrictive stipulation, a Bureau of Land Management decision requiring the execution and filing of the roadless area stipulation will be vacated and the case will be remanded to the Bureau for submission of the substitute stipulatfon to the offeror for execution and filing.

Benjamin T. Franklin, 19 IBLA 94 (Mar. 4, 1975)

Where an application to lease land under the jurisdiction of another agency is rejected because of objections by that agency, and where on appeal that agency subsequently agrees to lease the land subject to certain special stipulations, such stipulations will be submitted to the offeror for execution.

Shell Oil Company, 20 IBLA 282 (May 27, 1975)

Where the Forest Service requests imposition of a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, the case will be set aside and remanded for consideration of a less stringent stipulation which the Forest Service has agreed to in other cases arising in the same and other national forests in Utah.

G. W. Anderson, 21 IBLA 328 (Aug. 14, 1975)

The execution of special stipulations as a condition precedent to issuance of oil and gas leases for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the final authority for oil and gas leasing on public domain land rests in this Department.

Earl R. Wilson, 21 IBLA 392 (Aug. 27, 1975)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Where the reasons given for rejection of an oil and gas lease offer are that several archeological sites, possibly other such archeological sites, and scenic values of certain lands might be endangered by oil and gas development, but the field report relied upon does not delineate the archeological sites and fails to describe the scenic values that would be affected, the decision may be set aside and the case remanded for further investigation to determine if oil and gas leasing could be allowed with protective stipulations, or, if oot, to substantiate the basis for rejection.

Phillip S. Mahoney, 22 IBLA 136 (Sept. 26, 1975)

On appeal from decisions rejecting oil and gas lease offers insofar as they include lands within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the lands under a no surface occupancy stipulation, and the offerors indicate they would accept such a stipulation for all the lands at issue, the decisions will be set aside and the cases remanded for consideration of issuance of leases containing no surface occupancy stipulations on the lands in the lava flow.

Houston Oil and Minerals Corporation, Leland A. Hodges, Trustee, 22 IBLA 172 (Sept. 30, 1975)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect identifiable resource values as a condition precedent to issuance of an oil and gas lease. Stipulations proposed by the Forest Service will be carefully considered by this Department, but the final decision for oil and gas leasing on public domain land rests with this Department. A "no surface occupancy" stipulatioo proposed in order to protect a recreation area cannot stand if it might preclude surface occupancy unreasonably beyond the boundaries of the recreatfon area.

Beverley Lasrich, 22 IBLA 202 (Oct. 15, 1975)

On appeal from a decision rejecting an oil and gas lease offer insofar as it includes land within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land under a no surface occupancy stipulation, and the offeror indicates he would accept such a stipulation for the land at issue, the decision will be set aside and the case remanded for consideration of issuance of a lease containing a no surface occupancy stipulation on the land in the lava flow.

Leland A. Hodges, Trustee, 23 IBLA 142 (Dec. 23, 1975)

SUSPENSIONS

A regulatory change in the definition of the phrase "primary term" of an oil and gas lease is not an order or consent of the Secretary of the Interior to suspend operations under an oil and gas lease.

Inexco Oil Company, 20 IBLA 134 (May 5, 1975)

Where an oil and gas lessee appeals from a decision of an Oil and Gas Supervisor's determination that additional royalties are due to the Government, and simultaneously files a request for suspension of the ruling, which is granted by the Geological Survey "until further notice," prejudgment interest continues to accrue during the period of the suspension. This conclusion is premised on the doctrine that interest is compensation for delay in payment.

Atlantic Richfield Company, 21 IBLA 98 (June 30, 1975) 82 I.D. 316

Applications by lessees for relief of producing requirements must be made to the appropriate Regional Oil and Gas Supervisor of the Geological Survey. No suspension of operations and production is authorized in the absence of a well capable of production on the leasehold, except when the Secretary directs a suspension in the interest of conservation.

Duncan Miller, 21 IBLA 361 (Aug. 25, 1975)

TERMINATION

Oil and gas leases terminate by operation of law if the annual rental payment is not actually received in the proper office by the close of the business day.

M. J. Harvey, Jr., 19 IBLA 230 (Mar. 25, 1975)

An oil and gas lease is automatically terminated by operation of law where an unsigned rental check is tendered prior to the anniversary date of the lease but is not signed and returned until after the anniversary date.

Richard V. Bowman, 19 IBLA 261 (Mar. 31, 1975)

An oil and gas lease terminated by operation of law for failure to pay the annual rentals on time may be reinstated where the lessee's delay in making payment was due to his seeking clarification of an illegible notice of payment sent by the Bureau of Land Management, and his action demonstratea his reliance on the notice.

Joseph E. Steger, 20 IBLA 206 (May 8, 1975)

When an oil and gas lease, extended beyond the primary term because of production, no longer has a well capable of producing oil or gas in paying quantities, the lease terminates by

TERMINATION--Continued

operation of law if within 60 days after cessation of production no approved reworking or drilling operations are begun on the lease.

Estate of Anna Aronow, 20 IBLA 344 (June 11, 1975)

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extension provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

Tenneco Oil Company, Sun Oil Company, 21 IBLA 130 (July 14, 1975)

Before relief may be granted to the lessee of a terminated oil and gas lease, he must comply with the prerequisites set forth in 30 U.S.C. § 188 (1970). The Secretary has no authority to waive such statutory prerequisites.

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the lease rental timely.

Advice or information received over the telephone from personnel of the Bureau of Land Management does not constitute a "bill or decision rendered by" the Department under 30 U.S.C. § 188(b) (1970).

Only when a lessee has made a deficient rental payment on or before the anniversary date of an oil and gas lease will a Notice of Deficiency be sent. If no payment at all is made, the lease will not qualify for consideration under the exceptions to automatic termination set forth in 30 U.S.C. § 188(b) (1970).

A Notice of Termination is sent to the lessee of a terminated oil and gas lease only if he has tendered payment of the rental within twenty days after the anniversary date.

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975) 82 I.D. 386

Where a lessee fails to pay the annual rental on or before the anniversary date, and where the lessee knew, or should have known, that the payment was due, estoppel will not operate to relieve the lessee of the consequent automatic termination of the lease.

The Columbus Corporation, 22 IBLA 270 (Oct. 30, 1975)

Where the deficiency in rental paid on or before the anniversary date of a lease is nominal and a notice of deficiency is sent to the lessee, the lease terminates by operation of law when the balance is not paid within 15 days from receipt of the notice or until the anniversary date, whichever is later.

OIL AND GAS LEASES--Continued

TERMINATION--Continued

No petition for reinstatement of an oil and gas lease terminated by operation of law, 30 U.S.C. § 188(b) (1970), may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Joseph Francis, 22 IBLA 277 (Oct. 30, 1975)

An oil and gas lease in a unit area will be held to have been extended by diligent drilling on the anniversary date even though the lease was not properly committed to the unit, where the parties in interest and the Department had assumed that the land was properly committed and there are no intervening rights to the leasehold.

Woods Petroleum Corp., 23 IBLA 12 (Nov. 25, 1975)

TWENTY-YEAR LEASES

Where a 20-year oil and gas lease, committed to an approved unit agreement prior to the end of its initial term in 1962 and thereby extended beyond the original term, is eliminated from the unit agreement in 1972 and its term is automatically extended for 2 years and so long thereafter as oil or gas is produced in paying quantities, such a lease is not eligible for further 10-year renewals and an application for such a renewal filed in 1974 is properly rejected.

Marathon Oil Company, Chevron Oil Company, 19 IBLA 1 (Feb. 20, 1975)

UNIT AND COOPERATIVE AGREEMENTS

Where a 20-year oil and gas lease, committed to an approved unit agreement prior to the end of its initial term in 1962 and thereby extended beyond the original term, is eliminated from the unit agreement in 1972 and its term is automatically extended for 2 years and so long thereafter as oil or gas is produced in paying quantities, such a lease is not eligible for further 10-year renewals and an application for such a renewal filed in 1974 is properly rejected.

Marathon Oil Company, Chevron Oil Company, 19 IBLA 1 (Feb. 20, 1975)

An oil and gas lease in a unit area will be held to have been extended by diligent drilling on the anniversary date even though the lease was not properly committed to the unit, where the parties in interest and the Department had assumed that the land was properly committed and there are no intervening rights to the leasehold.

Woods Petroleum Corp., 23 IBLA 12 (Nov. 25, 1975)

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION

An oil and gas lease on which there is no well capable of production in paying quantities will terminate by operation of law if the annual rental payments are not submitted on or before the anniversary date. A well capable of production in paying quantities on the anniversary date is one which can actually produce enough oil to exceed the cost of its extraction. Neither the production of water nor the production of meager quantities of oil, albeit with hopes for paying production at some time in the future, constitute production in paying quantities on the anniversary date of the lease.

The Polumbus Corporation, 22 IBLA 270 (Oct. 30, 1975)

OIL SHALE

WITHDRAWALS

A decision of the Bureau of Land Management rejecting a native allotment application because the land is within an oil shals withdrawal will be set aside and remanded for further consideration where the Secretary of the Interior has directed the Geological Survey to review its mineral classifications in Alaska and the applicant requests an opportunity to present evidence to dispute the classification.

Raymond Paneak, 19 IBLA 68 (Feb. 25, 1975)

Once the U.S. Geological Survey has classified certain lands as containing deposits of oil shale, those lands are considered to be withdrawn by Executive Order No. 5327. In order to challenge such a classification, a clear showing of error is required.

An application for a phosphate prospecting permit is properly rejected upon a determination that lands applied for are withdrawn as oil shale lands by Executive Order No. 5327.

Thomas E. Gaynor, 21 IBLA 178 (July 25, 1975)

OUTER CONTINENTAL SHELF LANDS ACT
(See also Oil and Gas Leases)

GENERALLY

In interpreting provisions of state leases which have been validated under sec. 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1335 (1970), the Department will give great weight to judicial and administrative interpretations rendered by officials of that State. Where, however, there is a conflict of opinion between state officials as to the proper interpretation of a provision of a state lease, the Department of the Interior will independently interpret that section, applying the general rules of contract construction.

Ocean Drilling & Exploration Company, Chevron Oil Company, 21 IBLA 137 (July 15, 1975)

OUTER CONTINENTAL SHELF LANDS ACT--Continued

STATE LEASES

Generally

In interpreting provisions of state leases which have been validated under sec. 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1335 (1970), the Department will give great weight to judicial and administrative interpretations rendered by officials of that State. Where, however, there is a conflict of opinion between state officials as to the proper interpretation of a provision of a state lease, the Department of the Interior will independently interpret that section, applying the general rules of contract construction.

The provisions of those leases issued by the State of Louisiana on the 1948 lease form and which have been validated under sec. 6 of the Outer Continental Shelf Lands Act do not prohibit the allowance by the Oil and Gas Supervisor of a reasonable deduction of barging transportation costs from the field to the point of the first market for the production from the lease.

Ocean Drilling & Exploration Company, Chevron Oil Company, 21 IBLA 137 (July 15, 1975)

PATENTS OF PUBLIC LANDS

GENERALLY

The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified uses proposed in the patent application within a reasonable time following the date of issuance of patent.

Failure over a seventeen-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified public uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County School District, 18 IBLA 289 (Jan. 6, 1975) 82 I.D. 1

Sec. 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or entry under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59 (Apr. 24, 1975) 82 I.D. 174

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified recreational uses proposed in the patent application within a reasonable time following the date of issuance of patent.

Failure over an eighteen-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified recreational uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

City of Monte Vista, Colorado, 22 IBLA 107 (Sept. 22, 1975)

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

The Department of the Interior is not estopped from denying the legality of a payment in lieu of forfeiture provision inserted in a Recreation and Public Purposes Act patent when such denial works no serious injustice against the patentee and implementation of the provision would harm the public interest by divesting the Government of all jurisdiction over the patented land, thus, precluding enforcement of the Recreation and Public Purposes Act requirement that lands patented under the Act be devoted to a definitely proposed project for the benefit of the public.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

PATENTS OF PUBLIC LANDS--Continued

EFFECT

The Department of the Interior has neither jurisdiction over nor authority to issue oil and gas leases for lands patented to the State of Alaska.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59
(Apr. 24, 1975) 82 I.D. 174

Although a patent issued pursuant to an Alaska State selection may have been issued by mistake, it vested title in the State and removed from the jurisdiction of this Department the right to inquire into and consider all disputed questions of fact as well as rights in the land.

Thomas Albert, 20 IBLA 338 (June 11, 1975)

Even if a patent issued to a homestead entryman by mistake or inadvertence, it vested title in the patentee and removed from the jurisdiction of this Department the right to decide all disputed questions of fact as well as rights to land.

Basille Jackson, 21 IBLA 54 (June 18, 1975)

Remedy for errors of law, as well as for mistakes of fact, in the issue of a patent to land within the jurisdiction of the Department is a direct proceeding by a bill in equity to correct them.

Administrative Appeal of Ruth Pinto Lewis v. Superintendent of the Eastern Navajo Agency,
4 IBIA 147 (Oct. 3, 1975) 82 I.D. 521

A patent issued under authority of law vests title in the patentee and removes the land from the jurisdiction of the Interior Department.

Nadja Davis Gamble, 23 IBLA 128 (Dec. 23, 1975)

RESERVATIONS

Sec. 6(i) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that federal patents to the State include a proviso to the above effect, rather, it is subsequent State conveyances which must contain a reservation for minerals.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59
(Apr. 24, 1975) 82 I.D. 174

PATENTS OF PUBLIC LANDS--Continued

SUITS TO CANCEL

Although a patent issued pursuant to an Alaska State selection may have been issued by mistake, it vested title in the State and removed from the jurisdiction of this Department the right to inquire into and consider all disputed questions of fact as well as rights in the land.

Thomas Albert, 20 IBLA 338 (June 11, 1975)

Even if a patent issued to a homestead entryman by mistake or inadvertence, it vested title in the patentee and removed from the jurisdiction of this Department the right to decide all disputed questions of fact as well as rights to land.

Basille Jackson, 21 IBLA 54 (June 18, 1975)

PHOSPHATE LEASES AND PERMITS

PERMITS

An application for a phosphate prospecting permit is properly rejected upon a determination that lands applied for are withdrawn as oil shale lands by Executive Order No. 5327.

Thomas E. Gaynor, 21 IBLA 178 (July 25, 1975)

POWER

FEDERAL POWER COMMISSION

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

State of Alaska, 20 IBLA 341 (June 11, 1975)

PRACTICE BEFORE THE DEPARTMENT
(See also Rules of Practice)

PERSONS QUALIFIED TO PRACTICE

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

Haruyuki Yamane, et al., 19 IBLA 320 (Apr. 7, 1975)

PRACTICE BEFORE THE DEPARTMENT--Continued

PERSONS QUALIFIED TO PRACTICE--Continued

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Pierce and Dehlinger, 22 IBLA 396 (Nov. 24, 1975)

PUBLIC LANDS
(See also Accretion, Avulsion, Boundaries, Surveys of Public Lands)

GENERALLY

A survey of a previously unsurveyed portion of an island, proved to have been in existence in 1876 when an original survey was conducted in the area, is proper and shall be officially filed where the record shows that the plat of survey reflects the true location of the island on the surface of the earth and was conducted in accordance with both the Manual of Survey Instructions and the special instructions for this conditional survey.

Chester H. Ferguson, et al., 20 IBLA 224 (May 13, 1975)

The survey of an offshore island without the use of 18.6-year mean high tide data, which governs boundary disputes between private upland and tideland owners, is proper; the 18.6-year lunar cycle tide data does not govern meander lines established in public land surveys.

Meander of an offshore island is ordinarily based on a mean high tide determined by the vegetative line upon the soil in accordance with the Bureau of Land Management's Manual of Surveying Instructions.

The meandering of the public land of an offshore island is properly based on a mean high tide line established at the vegetative line upon the soil, in accordance with the provisions of the Bureau of Land Management's Manual of Surveying Instructions, and a protest against the filing of a plat of survey based on such a mean high tide line is properly rejected.

The United States is not estopped to assert title to, survey, or deny the swamp and overflowed character of public lands constituting offshore islands in Florida either by Departmental inaction on the State's swampland application, or by inclusion of the islands in a swampland selection list, or by the survey protestants' adverse chain of title and claims of occupancy and use.

The Secretary of the Interior is authorized and under a duty to determine what lands are public lands and to survey such lands. Neither the Acts admitting Florida into the Union, nor the Reconstruction Act of March 2, 1867, divested the Secretary of the Interior of that authority

PUBLIC LANDS--Continued

GENERALLY--Continued

regarding islands in the State of Florida, nor divested the United States of title to any public lands in the State.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

ADMINISTRATION

The Bureau of Land Management, in the exercise of its discretionary power to issue special land use permits, may establish special fee assessments for off-road vehicle (ORV) events.

Walt's Racing Association, 18 IBLA 359 (Jan. 30, 1975)

APPRAISALS

Where a decision fixes a small tract rental derived from an appraisal report which does not comport with Departmental standards, the decision will be set aside and the case remanded for a new appraisal to establish the fair rental value.

Junction Oil Company, Inc., 21 IBLA 78 (June 25, 1975)

DISPOSALS OF

Generally

The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified uses proposed in the patent application within a reasonable time following the date of issuance of patent.

Failure over a seventeen-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified public uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County School District, 18 IBLA 289 (Jan. 6, 1975) 82 I.D. 1

A patent of land from the United States conveys only land which is surveyed, and when the surveyors have carried a survey only to a certain line, a grantee may not successfully challenge the correctness of their action or claim land beyond that line under a patent issued in accordance with that survey.

Chester H. Ferguson, et al., 20 IBLA 224 (May 13, 1975)

PUBLIC LANDS--Continued

DISPOSALS OF--Continued

Generally--Continued

The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified recreational uses proposed in the patent application within a reasonable time following the date of issuance of patent.

Failure over an eighteen-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified recreational uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

City of Monte Vista, Colorado, 22 IBLA 107 (Sept. 22, 1975)

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

The Department of the Interior is not estopped from denying the legality of a payment in lieu of forfeiture provision inserted in a Recreation and Public Purposes Act patent when such denial works no serious injustice against the patentee and implementation of the provision would harm the public interest by divesting the Government of all jurisdiction over the patented land, thus, precluding enforcement of the Recreation and Public Purposes Act requirement that lands patented under the Act be devoted to a definitely proposed project for the benefit of the public.

Okanogan County Public Utility District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

LEASES AND PERMITS

The issuance of a public airport lease on national resource lands lies within the discretion of the Secretary of the Interior. The Department may require an applicant for a public airport lease to accept special stipulations in order to protect the environmental quality of the land, so long as the stipulations are not inconsistent with other reasonable requirements of the Bureau of Land Management or Federal Aviation Administration.

A. W. Brothers, 19 IBLA 144 (Mar. 7, 1975)

PUBLIC LANDS--Continued

LEASES AND PERMITS--Continued

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors involved, and no sufficient basis to disturb the decision is shown.

Boulder City Aero Club, Inc., 21 IBLA 343 (Aug. 18, 1975)

Where the holder of mineral leases in the Lake Mead National Recreation Area fails to mine and produce minerals within the time prescribed by the lease for reasons not beyond the control of the lessee, the leases are not in good standing and therefore are not subject to renewal.

It is a proper exercise of discretion to refuse to renew mineral leases in the Lake Mead National Recreation Area where the lessee failed to commence mining and produce minerals as required by regulation and by the terms of the lease for reasons which were attributable to the lessee.

Apache Oro Company, 22 IBLA 331 (Nov. 11, 1975)

RIPARIAN RIGHTS

An oil and gas lease offer for less than 640 acres of land is properly rejected when the application fails to include adjoining, unsurveyed, nonnavigable riverbed lands which were available for leasing at the time the offer was filed.

John E. Williams, 18 IBLA 354 (Jan. 16, 1975)

Generally, the meander line is not to be treated as a boundary and when the United States conveys a tract of land by patent referring to an official plat which shows the tract to be bordering on a navigable body of water, the patent conveys all the land to the water line. However, there are three situations in which meander lines will serve as the boundary of a conveyance or grant, rather than a water body: namely, where there is (1) fraud or (2) gross error shown in the survey, or (3) where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

Chester H. Ferguson, et al., 20 IBLA 224 (May 13, 1975)

SPECIAL USE PERMITS

Issuance of a special use permit is clearly discretionary, and the Bureau of Land Management may reject an application in part for a permit for commercial river running where an evaluation of the Bureau's river management program

PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

for the Green River shows that the total passenger days applied for will exceed the river carrying capacity and would be inconsistent with the Bureau's objectives and program for environmental protection of the river area.

Canon Tours, Inc., 20 IBLA 216 (May 8, 1975)

The issuance of a special land-use permit is discretionary, and the Bureau of Land Management may reject a special land-use permit application when the proposed use would adversely affect the public interest, and may offer, in the alternative, a permit providing for use consonant with proper management of national resource lands.

Jerry Tecklin, Leonard Brackett, 20 IBLA 308 (May 30, 1975)

The issuance of a special land use permit by the Bureau of Land Management is clearly discretionary, but the Bureau may not issue a permit when the provisions of existing laws may be invoked to provide for the proposed use. However, if a withdrawal of the lands in issue precludes the invocation of such provisions, a permit may be granted if consistent with the public interest. Where the land has been withdrawn by Executive Order No. 6206 of July 16, 1933, for the protection of the water supply of the City of Los Angeles, and the City objects to the issuance of a permit for agricultural purposes, but does not show why it objects, the case will be remanded to develop the facts and for further appropriate consideration.

Edward L. Butterworth, 23 IBLA 136 (Dec. 23, 1975)

PUBLIC RECORDS
(See also Administrative Procedure)

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

PUBLIC SALES

PREFERENCE RIGHTS

A contiguous landowner loses his preference right to purchase land offered at public sale when he fails to submit his preference right bid within the 30-day period provided by regulation; the Government's failure to return the check

PUBLIC SALES--Continued

PREFERENCE RIGHTS--Continued

which accompanied his unsuccessful bid during this period, and his reliance on assurances it had been returned, do not excuse noncompliance with the preference right regulation, 43 CFR 2711.4(b)(1).

Basil R. Twist, 19 IBLA 75 (Feb. 26, 1975)

SALES UNDER SPECIAL STATUTES

A contiguous landowner loses his preference right to purchase land offered at public sale when he fails to submit his preference right bid within the 30-day period provided by regulation; the Government's failure to return the check which accompanied his unsuccessful bid during this period, and his reliance on assurances it had been returned, do not excuse noncompliance with the preference right regulation, 43 CFR 2711.4(b)(1).

Basil R. Twist, 19 IBLA 75 (Feb. 26, 1975)

RAILROAD GRANT LANDS

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

In a hearing on a patent application filed under the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), the Government has the obligation of making a prima facie case of mineral character between the date the railroad line was definitely located and the date of purchase, whereupon the applicant has the burden of establishing nonmineral character by a preponderance of the evidence.

Land included in an application under sec. 321(b) of the Transportation Act of 1940 is properly determined to be mineral in character between the date the railroad line was definitely located and the date of purchase where the land was covered by mining claims, evidence of extensive and successful mining on adjacent lands was established, and the subject land had similar surface geologic conditions when compared with the surface mineralization on adjacent lands having valuable mineral deposits.

Where land applied for pursuant to sec. 321(b) of the Transportation Act of 1940 was mineral in character between the date the railroad line was definitely located and the date of purchase from the railroad company, and the purchaser was chargeable with actual or constructive notice of that fact, the purchaser was not an innocent purchaser for value.

Southern Pacific Company, Heirs of George H. Wedekind, 20 IBLA 365 (June 12, 1975)

RECLAMATION HOMESTEADS

GENERALLY

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior establishes the unit of acreage per entry and publicly announces the availability of water for irrigation.

Richard E. Crill, et al., 18 IBLA 428 (Feb. 14, 1975)

RECLAMATION LANDS

GENERALLY

An application to make a homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Richard E. Crill, et al., 18 IBLA 428 (Feb. 14, 1975)

RECREATION AND PUBLIC PURPOSES ACT

The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified uses proposed in the patent application within a reasonable time following the date of issuance of patent.

Failure over a seventeen-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified public uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County School District, 18 IBLA 289 (Jan. 6, 1975) 82 I.D. 1

The filing of a petition application under the Recreation and Public Purposes Act does not segregate the land applied for or preclude consideration of later filed applications unless and until the land is finally classified for the purpose applied for under the Act.

The denial of a petition for classification and the rejection of an application under the Recreation and Public Purposes Act for a lease of lands which have been withdrawn and which are also subject to a state selection application which, under the terms of the withdrawal order, may be allowed, does not violate the tenets of due process because the disposition of the petition application is at the discretion of the Secretary, and the petitioner applicant

RECREATION AND PUBLIC PURPOSES ACT--Continued

has no vested right protected by constitutional guarantees or by the Administrative Procedure Act.

Mountaineering Club of Alaska, Inc., 19 IBLA 198 (Mar. 19, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III, 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

The Recreation and Public Purposes Act, and the pertinent regulations thereunder, require that a grantee of land under the Act must develop the land in accordance with the specified recreational uses proposed in the patent application within a reasonable time following the date of issuance of patent.

Failure over an eighteen-year period to develop land patented under the Recreation and Public Purposes Act in accordance with the specified recreational uses proposed in the patent application and set out in the patent is a violation of the condition in the patent which provides that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

City of Monte Vista, Colorado, 22 IBLA 107 (Sept. 22, 1975)

The rejection of an application for the purchase of land under the Recreation and Public Purposes Act does not violate the tenets of due process since the disposition of the application is at the discretion of the Department, and the applicant has acquired no vested right protected by the United States Constitution.

The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. The proposed mode for financing the development of land applied for pursuant to the Recreation and Public Purposes Act cannot compel issuance of a patent instead of a lease if issuance of a patent would be contrary to the public interest as determined by the Secretary or his delegate. Thus, in the event the applicant has secured financial resources by promising acquisition of title to the land, the proper action is not for the Bureau of Land Management to change the applicant's tenure status in violation of the public interest, but rather for the applicant to secure alternate financing arrangements.

Board of County Commissioners, Ouray County, Colorado, 22 IBLA 182 (Oct. 7, 1975)

RECREATION AND PUBLIC PURPOSES ACT--Continued

The Recreation and Public Purposes Act, and the regulations thereunder, do not authorize additional payment for the issuance of a supplemental patent (which voids an earlier patent's reversionary provision) as an alternative to forfeiture for noncompliance with the Act's provision that land patented under the Act only be used for an established or definitely proposed public project within a reasonable time following issuance of patent. The Department can alienate interests in public lands only within the limits authorized by law; therefore, issuance of a supplemental patent which eliminates the Act's mandatory reversionary provision is impermissible.

The Department of the Interior is not estopped from denying the legality of a payment in lieu of forfeiture provision inserted in a Recreation and Public Purposes Act patent when such denial works no serious injustice against the patentee and implementation of the provision would harm the public interest by divesting the Government of all jurisdiction over the patented land, thus, precluding enforcement of the Recreation and Public Purposes Act requirement that lands patented under the Act be devoted to a definitely proposed project for the benefit of the public.

Okanogan County Public Utility, District No. 1, Washington, 22 IBLA 342 (Nov. 14, 1975)

REGULATIONS
(See also Administrative Procedure)

GENERALLY

The regulations pertaining to sec. 15 grazing leases provide that a corporation is a qualified applicant for a lease if it is a corporation whose controlling interest is vested in persons who are engaged in the livestock business. 43 CFR 4121.1-1(b). Where the corporate applicant itself is engaged in a livestock business such a showing is sufficient for the corporation to meet this requirement without the need for those holding a controlling interest in the corporation to make an additional showing that they are engaged in a livestock operation in their individual capacities.

Defenders of Wildlife, 19 IBLA 219 (Mar. 25, 1975)

A regulatory change in the definition of the phrase "primary term" of an oil and gas lease is not an order or consent of the Secretary of the Interior to suspend operations under an oil and gas lease.

A lessee's request that its oil and gas lease be reinstated because it relied on a regulation which has been changed is properly rejected where the lease expired by operation of law at the end of its extended term and there is no statutory authority whereby it can be reinstated.

Inexco Oil Company, 20 IBLA 134 (May 5, 1975)

REGULATIONS--Continued

GENERALLY--Continued

A grazing lease issued in 1933 for reindeer under the Act of Mar. 4, 1927, became subject to the Reindeer Act of Sept. 1, 1937, and rules and regulations thereunder. Interpretations of the effect of grazing rights granted under the 1937 Act upon a native allotment applicant's claim of occupancy may be applied to such a lease, if they are not to the detriment of the lessee.

A regulation pertaining to grazing permits under the Reindeer Grazing Act of 1937 allows settlement rights to be initiated while a permit issued under that Act is in existence. The policy manifest in that regulation may be followed, in the exercise of the Secretary's discretion, to permit consideration of a native allotment applicant's occupancy of land after the 1937 Act, even though the land was covered by a reindeer grazing lease issued prior to that time under the Act of Mar. 4, 1927, and the regulation was promulgated after initiation of the occupancy.

Kristeen J. Burke, Joe N. Melovedoff, Victor Melovedoff, 20 IBLA 162 (May 5, 1975)

Where the Bureau of Land Management changes an administrative practice to thereafter refuse to accept unofficial copies of the simultaneous oil and gas lease entry card, by an order dated Mar. 26, 1975, the new practice will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Feb. 1975 simultaneous filing period.

V. J. Malloy, 20 IBLA 327 (June 6, 1975)

A regulation should be so clear that there is no basis for a patent applicant's noncompliance with it before it may be so interpreted as to deprive him of a statutory right to receive title to his desert land entry. If there is doubt as to the meaning and intent of a regulation, such doubt should be resolved favorably to the applicant.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975) 82 I.D. 377

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial aurprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

REGULATIONS--Continued

GENERALLY--Continued

The Secretarial instruction of Oct. 18, 1973, which mandates a showing by a Native allotment applicant of 5 years of occupancy prior to a withdrawal of the land, was not required to be published as rulemaking since 5 U.S.C. § 553(a)(2) (1970) exempts from its ambit matters pertaining to public property.

Heirs of Dorothy Gordon, 22 IBLA 213
(Oct. 15, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266
(Oct. 30, 1975)

APPLICABILITY

Regulation 43 CFR 2627.3(b)(2) requires that conflicting oil and gas lease offers filed pursuant to the Mineral Leasing Act of 1920, except for preference right applications, whether filed prior to, simultaneously with, or after the filing of an Alaska State selection, must be rejected when and if the selection is tentatively approved. The preference right referred to in the regulation does not apply to an oil and gas lease offeror who receives a priority right as the first qualified applicant in the event the Department decides to issue a lease.

Richard W. Rowe, Daniel Gaudiane, 20 IBLA 59
(Apr. 24, 1975) 82 I.D. 174

Where applications for a right-of-way and a special land-use permit are filed in conformity with the requirements of regulations then in effect, and the regulations are amended while final action on the applications is pending, but the amended regulations are made effective at a future date, then if the right-of-way and permit are issued prior to the effective date of the amendments they will not be subject to the added requirements; but if the applications are still pending when the amendments become effective, the new regulations will govern.

Arizona Public Service Company, 20 IBLA 120
(Apr. 25, 1975)

While 43 CFR 4.470(b) bars subsequent challenge to "matters adjudicated" in a final decision of a District Manager when no appeal of that decision is undertaken, the presence or absence of excess forage in successive growing seasons is not a matter subject to this prohibition.

Ervin J. Crowder, 20 IBLA 305 (May 30, 1975)

REGULATIONS--Continued

BINDING ON THE SECRETARY

A departmental regulation promulgated pursuant to and comporting with statutory authority has the force and effect of law. One who exercises the delegated authority of the Secretary may not disregard the plain and unambiguous provisions of a mandatory regulation so as to impose a more onerous requirement on an applicant than is prescribed by the regulation in effect.

Arizona Public Service Company, 20 IBLA 120
(Apr. 25, 1975)

FORCE AND EFFECT AS LAW

A departmental regulation promulgated pursuant to and comporting with statutory authority has the force and effect of law. One who exercises the delegated authority of the Secretary may not disregard the plain and unambiguous provisions of a mandatory regulation so as to impose a more onerous requirement on an applicant than is prescribed by the regulation in effect.

Arizona Public Service Company, 20 IBLA 120
(Apr. 25, 1975)

INTERPRETATION

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crapo, Richard L. Crapo, 19 IBLA 208
(Mar. 21, 1975)

A regulation should be so clear that there is no basis for a patent applicant's noncompliance with it before it may be so interpreted as to deprive him of a statutory right to receive title to his desert land entry. If there is doubt as to the meaning and intent of a regulation, such doubt should be resolved favorably to the applicant.

Wallace S. Bingham, 21 IBLA 266 (Aug. 11, 1975)
82 I.D. 377

PUBLICATION

Where notice of proposed rulemaking to change certain filing fees and to impose other charges has been published in the Federal Register, but no final rules have been published, the old schedule of fees will remain in effect until such time as the new rules are finally adopted, published and made effective.

Arizona Public Service Company, 20 IBLA 120
(Apr. 25, 1975)

REGULATIONS--Continued

VALIDITY

Where notice of proposed rulemaking to change certain filing fees and to impose other charges has been published in the Federal Register, but no final rules have been published, the old schedule of fees will remain in effect until such time as the new rules are finally adopted, published and made effective.

Arizona Public Service Company, 20 IBLA 120 (Apr. 25, 1975)

A regulation defining "eligible refiners" under the Act of July 13, 1946, providing for the sale of Government royalty oil or gas, as owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities, is an implementation of the Act within the ambit of the Secretary of the Interior's authority to prescribe rules and regulations.

Thunderbird Resources, Inc., 20 IBLA 248 (May 16, 1975)

REINSTATEMENT

GENERALLY

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the lessee does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The fact the courtesy rental notice did not come to the attention of the lessee until six days after the rental due date is not a justifiable excuse for late payment of the rental.

Levi T. Bellah, 22 IBLA 1 (Sept. 4, 1975)

RES JUDICATA

The doctrine of administrative finality, the administrative counterpart of res judicata, ordinarily bars reopening the issue of a permittee's class 1 base property qualifications resolved in a prior Departmental decision, but will not prevent modification of a decision to correct a conclusion inconsistent with the legal ruling of the case and apparently the result of an oversight as to the basis of the factual finding upon which it relies.

T. T. Cowgill, et al., 19 IBLA 274 (Apr. 7, 1975)

RES JUDICATA--Continued

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

United States v. A. B. Fleming, et al., 20 IBLA 83 (Apr. 24, 1975)

Where an appeal has been taken and a final Departmental decision has been reached, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

RIGHTS-OF-WAY
(See also Indian Lands, Outer Continental Shelf Lands Act, Reclamation Lands)

GENERALLY

Where an appraisal has followed established criteria in calculating the fair-market value of rental for a right-of-way, it will be affirmed, absent a showing by positive and substantial evidence that the appraisal is in error.

Western Slope Gas Co., 21 IBLA 119 (July 14, 1975)

ACT OF FEBRUARY 25, 1920

Where an appraisal has followed established criteria in calculating the fair-market value of rental for a right-of-way, it will be affirmed, absent a showing by positive and substantial evidence that the appraisal is in error.

Western Slope Gas Co., 21 IBLA 119 (July 14, 1975)

APPLICATIONS

Where an appraisal has followed established criteria in calculating the fair-market value of rental for a right-of-way, it will be affirmed, absent a showing by positive and substantial evidence that the appraisal is in error.

Western Slope Gas Co., 21 IBLA 119 (July 14, 1975)

RIGHTS-OF-WAY--Continued

CANCELLATION

Sec. 108 of Title 23, United States Code, does not require a state to file with the Department of the Interior proof of construction or utilization of a material site right-of-way issued pursuant to the Federal Aid Highway Act.

The "Secretary" referred to in that section is the Secretary of Transportation, and administration of that provision is a function of the Department of Transportation. Therefore, an apparent failure of compliance by the state does not mandate summary cancellation of the right-of-way by the Department of the Interior.

The Bureau of Land Management in granting a material site right-of-way pursuant to 23 U.S.C. § 317 (1970), may impose special terms and conditions which are not incompatible with the Act or the public interest, and a failure on the part of the grantee to comply will make the right-of-way subject to cancellation.

Where a regulation recites that a right-of-way "shall be subject to cancellation" for violation of its terms and conditions, the authorized officer is invested with the discretion to cancel or not, depending upon the circumstances.

State of Alaska, Department of Highways, 20 IBLA 261 (May 19, 1975) 82 I.D. 242

CONDITIONS AND LIMITATIONS

The Bureau of Land Management in granting a material site right-of-way pursuant to 23 U.S.C. § 317 (1970), may impose special terms and conditions which are not incompatible with the Act or the public interest, and a failure on the part of the grantee to comply will make the right-of-way subject to cancellation.

State of Alaska, Department of Highways, 20 IBLA 261 (May 19, 1975) 82 I.D. 242

FEDERAL HIGHWAY ACT

Sec. 108 of Title 23, United States Code, does not require a state to file with the Department of the Interior proof of construction or utilization of a material site right-of-way issued pursuant to the Federal Aid Highway Act.

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The Bureau of Land Management in granting a material site right-of-way pursuant to 23 U.S.C. § 317 (1970), may impose special terms and conditions which are not incompatible with the Act or the public interest, and a failure on the part of the grantee to comply will make the right-of-way subject to cancellation.

State of Alaska, Department of Highways, 20 IBLA 261 (May 19, 1975) 82 I.D. 242

RULES OF PRACTICE

(See also Appeals, Contests and Protests, Contracts, Federal Coal Mine Health and Safety Act of 1969, Hearings, Indian Probate, Practice Before the Department)

GENERALLY

Where the party bearing the risk of nonpersuasion does not appear at a hearing ordered pursuant to 43 CFR 4.415, that party's appeal is properly dismissed.

Stanley G. West, 18 IBLA 337 (Jan. 10, 1975)

A Bureau of Land Management State Office may reconsider one of its decisions prior to the filing of an appeal in the case, but the filing of an appeal terminates that authority.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

Where a lessee fails to pay the annual rental on or before the anniversary date, and where the lessee knew, or should have known, that the payment was due, estoppel will not operate to relieve the lessee of the consequent automatic termination of the lease.

The Polumbus Corporation, 22 IBLA 270 (Oct. 30, 1975)

APPEALS

Generally

The doctrine of administrative finality, the administrative counterpart of res judicata, ordinarily bars reopening the issue of a permittee's class 1 base property qualifications resolved in a prior Departmental decision, but will not prevent modification of a decision to correct a conclusion inconsistent with the legal ruling of the case and apparently the result of an oversight as to the basis of the factual finding upon which it relies.

T. T. Cowgill, et al., 19 IBLA 274 (Apr. 7, 1975)

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

Haruyuki Yamane, et al., 19 IBLA 320 (Apr. 7, 1975)

Where an appeal has been taken and a final Departmental decision has been reached, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

APPEALS--Continued

Generally--Continued

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against subsequent applications which were allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piece-meal adjudication.

Michael E. Heaney, 21 IBLA 339 (Aug. 18, 1975)

Decisions rendered by officers of the Bureau of Land Management should contain relevant appeal information except in those situations in which it is clear that no appeal lies.

L. O. Power, et al., 22 IBLA 15 (Sept. 5, 1975)

When the issues presented on appeal are moot the appeal will be dismissed.

Duncan Miller, 22 IBLA 52 (Sept. 17, 1975)

A petition for revocation of a withdrawal must be denied where the holding agency does not consent, and Bureau of Land Management should inform the applicant that further correspondence relative to his petition should be addressed to the holding agency.

Robert D. Hughes, 22 IBLA 121 (Sept. 26, 1975)

On appeal from decisions rejecting oil and gas lease offers insofar as they include lands within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the lands under a no surface occupancy stipulation, and the offerors indicate they would accept such a stipulation for all the lands at issue, the decisions will be set aside and the cases remanded for consideration of issuance of leases containing no surface occupancy stipulations on the lands in the lava flow.

Houston Oil and Minerals Corporation, Leland A. Hodges, Trustee, 22 IBLA 172 (Sept. 30, 1975)

An appeal to the Director, Geological Survey, is properly dismissed by him where the appellant failed to comply with the procedure prescribed by the applicable regulations with respect to the form and content of the notice of appeal, the time afforded for the filing of additional reasons, arguments or briefs, and the procedure for obtaining an extension of such time, and no valid reason is given which would warrant excusing such failures as an exercise of administrative discretion.

Robert B. Ferguson, 23 IBLA 29 (Dec. 2, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

Where a contract for the construction of a power-line contained two rates for the erection of tower steel and the contractor, contending that the contract was ambiguous (which was admitted by the Government in part), claimed additional compensation at the higher helicopter erection rate and filed a request for the production of documents in nine separate categories which request was opposed by the Government principally upon the ground that the documents were irrelevant to any issue in the appeal, the Board, following the rule that it is not a valid objection that information sought in discovery proceedings may not be admissible at the hearing if the request appears reasonably calculated to lead to the discovery of admissible evidence, grants appellant's request in principal part.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (Dec. 18, 1975) 82 I.D. 625

On appeal from a decision rejecting an oil and gas lease offer insofar as it includes land within a lava flow under consideration for primitive or natural area status, when the Bureau of Land Management indicates that it is willing to lease some of the land under a no surface occupancy stipulation, and the offeror indicates he would accept such a stipulation for the land at issue, the decision will be set aside and the case remanded for consideration of issuance of a lease containing a no surface occupancy stipulation on the land in the lava flow.

Leland A. Hodges, Trustee, 23 IBLA 142 (Dec. 23, 1975)

Burden of Proof

A determination by a District Manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

A party challenging a determination that lands are within a known geologic structure has the burden of making a clear and definite showing of error in the determination; material indicating that the geologic formation at issue is irregular in quality and productivity does not constitute a showing that the lands are not presumptively productive, i.e., that the lands are not within the known or inferred limits of the multiple and overlapping producing intervals involved.

Nola Crace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (Mar. 5, 1975)

The burden of proving that failure to pay advance rentals on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence is the obligation of the one who failed to make timely payment.

M. J. Harvey, Jr., 19 IBLA 230 (Mar. 25, 1975)

A protestant against the filing of a survey plat bears the burden of proof, i.e., the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant state has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the state under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, i.e., the risk of nonpersuasion, in the proceeding.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

In a mining claim contest, the claimant is the proponent of the rule or order that he has complied with the provisions of the mining law, which have been brought into issue, and the Government bears the burden only of presenting a prima facie case of invalidity; the claimant must then preponderate on the issues litigated.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

To be able to support a claim for excess reprocurement costs, the Government must establish that work under a reprocurement contract has been performed and that payment has been made.

Appeal of Ballwebers Cleaning Service, IBCA-1057-1-75 (Oct. 2, 1975)

An oil and gas lease bidder appealing from the rejection of his tender on the basis of inadequacy of the bonus bid must show by substantial evidence either (1) the criteria utilized in establishing the minimum bid

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

value failed to include all relevant considerations, or included factors that were not relevant; or (2) the criteria were incorrectly applied.

H & W Oil Co., Inc., 22 IBLA 313 (Nov. 10, 1975)

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Company (a/k/a Iconco), IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

Discovery

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

Where a contract for the construction of a powerline contained two rates for the erection of tower steel and the contractor, contending that the contract was ambiguous (which was admitted by the Government in part), claimed additional compensation at the higher helicopter erection rate and filed a request for the production of documents in nine separate categories which request was opposed by the Government principally upon the ground that the documents were irrelevant to any issue in the appeal, the Board, following the rule that it is not a valid objection that information sought in discovery proceedings may not be admissible at the hearing if the request appears reasonably calculated to lead to the discovery of admissible evidence, grants appellant's request in principal part.

Appeal of Commonwealth Electric Co., IBCA-1048-11-74 (Dec. 18, 1975) 82 I.D. 625

S OF PRACTICE--Continued

PEALS--Continued

Dismissal

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons therefor within the time allowed.

W. R. Williamson, 19 IBLA 6 (Feb. 20, 1975)

An appeal from a District Manager's decision reducing the authorized use of lands offered under a sec. 15 grazing lease will be dismissed where the grazing season covered by the tern of the proposed lease has expired and the appellant must meet a precondition before any future lease issues. The dismissal, however, will be without prejudice to the appellant's submitting evidence to the District Manager to disprove the determination of the carrying capacity of the range, if he otherwise meets the precondition for a lease.

John T. Murtha, 19 IBLA 97 (Mar. 4, 1975)

An appeal will be dismissed where the claim on which it is based arose from a mistake in connection with the contractor's bid, resulting from the failure of his timely dispatched telegraphic bid modification to be received prior to bid opening and where it is clear that he intended to file his appeal in the General Accounting Office.

ppeal of P. L. Larsen Co., IBCA-1054-1-75
(Mar. 25, 1975)

An appeal from a decision denying a petition for deferment of annual assessment work on mining claims will be dismissed where the petitioner files evidence with its appeal showing that the assessment work was subsequently performed.

Hibernia Silver Mines, Inc., 20 IBLA 12
(Apr. 14, 1975)

Failure to serve notice of an appeal on an interested party pursuant to 25 CFR 2.36 does not make dismissal mandatory but it may be considered as cause for dismissal by the officer to whom it is made.

Administrative Appeal of J. B. Love v. Area Director, Aberdeen Area Office, et al., 4 IBLA 74 (June 6, 1975)

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed.

Elmer Peterson, 21 IBLA 52 (June 17, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal. A notice of appeal, although received within the 10-day grace period, but not transmitted within the 30-day period following service of the decision, is not timely filed and must be dismissed.

Shelley Anne Trainor, 21 IBLA 326 (Aug. 14, 1975)

Where a contractor has filed an appeal and has failed to file a complaint when often requested to do so over a two-year period, the appeal is dismissed for want of prosecution.

Appeal of Evergreen Engineering, Inc., IBCA-994-5-73
(Sept. 2, 1975) 82 I.D. 427

An appeal from a decision canceling a grazing lease for loss of control of non-federal lands upon which the lease was based will be dismissed where the lease has expired by its terms. The dismissal will be without prejudice to a new lease application for the grazing lands which the appellant may decide to submit.

Ralph Rogers, 22 IBLA 31 (Sept. 10, 1975)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

Thurman Banks, et al., 22 IBLA 205 (Oct. 15, 1975)

A qualified heir or devisee of a deceased applicant for a mineral lease under 43 CFR 3564, or the administrator or executor of his estate, may receive the lease in the applicant's stead, or maintain an appeal from the rejection of such application on the same basis as the heirs or representatives of deceased applicants for other kinds of mineral leases where no third-party interests require consideration.

George W. Wright, Sr. (Deceased), 22 IBLA 280
(Oct. 30, 1975)

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed and the appeal will be dismissed.

Appellant's failure to timely serve and prove service of appeal on adverse party named in the decision from which the appeal is taken will subject the appeal to summary dismissal.

Richard E. and Phyllis Lee, 22 IBLA 284
(Oct. 30, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal, and the notice, though filed within the 10-day grace period, was not transmitted within the 30-day period following service of the decision.

Martha Charlie, 22 IBLA 287 (Oct. 30, 1975)

An appeal to the Director, Geological Survey, is properly dismissed by him where the appellant failed to comply with the procedure prescribed by the applicable regulations with respect to the form and content of the notice of appeal, the time afforded for the filing of additional reasons, arguments or briefs, and the procedure for obtaining an extension of such time, and no valid reason is given which would warrant excusing such failures as an exercise of administrative discretion.

Robert B. Ferguson, 23 IBLA 29 (Dec. 2, 1975)

Effect of

A Bureau of Land Management State Office may reconsider one of its decisions prior to the filing of an appeal in the case, but the filing of an appeal terminates that authority.

John J. Sexton (On Reconsideration), 20 IBLA 187 (May 7, 1975)

A Bureau of Land Management Office has no jurisdiction to take further action on an oil and gas lease application where there has been an appeal to the Board of Land Appeals on that application.

Jean Oakason, 22 IBLA 33 (Sept. 10, 1975)

An appeal from a decision rejecting a color of title application will stay the running of the 60-day period, provided by the decision appealed from, for filing affidavits and evidence in support of arguments that the depedent resurvey of the land applied for erroneously classified the land as swamp and overflowed in character.

Paul H. and Fay L. Sleeper, 22 IBLA 318 (Nov. 10, 1975)

Failure to Appeal

The assignor of an oil and gas lease is not barred from protesting against a decision approving the assignment because of his failure to appeal from an earlier decision denying the assignee's request for assignment approval but stating that approval would be permitted upon performance of certain conditions.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Failure to Appeal--Continued

Where request for reconsideration of Bureau of Land Management 1968 homesite decision is taken in 1974, appellant stating he was never served with decision, but where receipt in record shows service in 1968, reconsideration should be denied.

Hollis E. Justis, 21 IBLA 63 (June 25, 1975)

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

State of Alaska, 22 IBLA 229 (Oct. 16, 1975)

Hearings

When an appellant asserts facts which do not on their face sustain the contentions on appeal, this Board will deny a request for a hearing to determine the asserted issues of fact. 43 CFR 4.415.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (Mar. 5, 1975)

In a mining claim contest, the claimant is the proponent of the rule or order that he has complied with the provisions of the mining law, which have been brought into issue, and the Government bears the burden only of presenting a prima facie case of invalidity; the claimant must then preponderate on the issues litigated.

Where the hearing record in a mining claim contest is unsatisfactory, a "stipulation" on another issue may have prevented the introduction of evidence relevant to the issue on appeal, the parties will not be unduly burdened, and further proceedings will likely be productive of relevant evidence, the Board may remand the case for additional hearing.

United States v. Ed Brandt, 21 IBLA 166 (July 22, 1975)

A request for a hearing in connection with an appeal will not be granted where undisputed facts are of record, and the determination rests on legal conclusions based on such facts.

Concho Petroleum Company and J. C. Karcher, 22 IBLA 139 (Sept. 26, 1975)

Where the decision appealed from is based essentially on the facts disclosed by appellant, there is no dispute as to any material fact, and the sole question presented is a legal issue, no evidentiary hearing is required on appeal.

Sarah F. Lindgren, Emery V. Showalter, 23 IBLA 174 (Dec. 31, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions

A contractor's petition to reopen and conduct an evidentiary hearing after an adverse decision of its appeal, which was decided on the record without an oral hearing, was denied where the petition, treated as a motion for reconsideration, not only failed to satisfy the newly discovered evidence rule but also failed to disclose the evidence which would be proffered at the hearing and thus furnished no reason for vacating the original decision.

Appeal of COAC, Inc., IBCA-1004-9-73 (Feb. 19, 1975) 82 I.D. 65

A contractor's motion for reconsideration is denied where the contractor offered to provide evidence on one claim item which was obtained after the Board's adverse decision but which could have been obtained, in the exercise of due diligence, before the hearing and where other evidence offered on all claim items was in the contractor's possession at the time of the hearing and no valid reason was given for the failure to introduce such evidence. The motion for reconsideration is not a vehicle for correction of errors or omissions by a party in the presentation of its case.

Appeal of Robert P. Jones, Contractor, IBCA-1002-8-73 (Aug. 6, 1975)

A contractor's parol evidence rule objection to the admission in evidence of the answer given to a question raised at a prebidding conference as set forth in a contemporaneous Government memorandum is overruled where the Board finds that the answer given simply reflects information contained in the invitation for bids on which the contract is based.

Appeal of J. A. LaPorte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

Where an appeal is timely the absence from a contracting officer's letter of a terminal paragraph advising the contractor of his right of appeal under the Disputes clause is not a basis for remand to the contracting officer.

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of VTN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975) 82 I.D. 527

Notice of Appeal

Where an appeal is timely the absence from a contracting officer's letter of a terminal paragraph advising the contractor of his right of appeal under the Disputes clause is not a basis for remand to the contracting officer.

RULES OF PRACTICE--Continued

APPEALS--Continued

Notice of Appeal--Continued

Claims of constructive change under a cost-plus-fixed-fee contract first presented in the notice of appeal are outside the jurisdiction of the Board and are remanded to the contracting officer for the issuance of new or supplemental findings.

Appeal of VTN Colorado, Inc., IBCA-1073-8-75 (Oct. 29, 1975) 82 I.D. 527

Reconsideration

A contractor's petition to reopen and conduct an evidentiary hearing after an adverse decision of its appeal, which was decided on the record without an oral hearing, was denied where the petition, treated as a motion for reconsideration, not only failed to satisfy the newly discovered evidence rule but also failed to disclose the evidence which would be proffered at the hearing and thus furnished no reason for vacating the original decision.

Appeal of COAC, Inc., IBCA-1004-9-73 (Feb. 19, 1975) 82 I.D. 65

A contractor's motion for reconsideration is denied where the contractor offered to provide evidence on one claim item which was obtained after the Board's adverse decision but which could have been obtained, in the exercise of due diligence, before the hearing and where other evidence offered on all claim items was in the contractor's possession at the time of the hearing and no valid reason was given for the failure to introduce such evidence. The motion for reconsideration is not a vehicle for correction of errors or omissions by a party in the presentation of its case.

Appeal of Robert P. Jones, Contractor, IBCA-1002-8-73 (Aug. 6, 1975)

Service on Adverse Party

An appeal to the Board of Land Appeals will not be dismissed for lack of service upon the adverse party where the adverse party is not specifically designated as such in the decision from which the appeal is taken.

T. T. Cowgill, et al., 19 IBLA 274 (Apr. 7, 1975)

Under 43 CFR 4.402, an appeal is subject to summary dismissal by the Board of Land Appeals when notice of appeal or statement of reasons is not served on adverse parties within the time prescribed.

Elmer Peterson, 21 IBLA 52 (June 17, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party--Continued

Appellant's failure to timely serve and prove service of appeal on adverse party named in the decision from which the appeal is taken will subject the appeal to summary dismissal.

Richard E. and Phyllis Lee, 22 IBLA 284 (Oct. 30, 1975)

Standing to Appeal

A qualified heir or devisee of a deceased applicant for a mineral lease under 43 CFR 3564, or the administrator or executor of his estate, may receive the lease in the applicant's stead, or maintain an appeal from the rejection of such application on the same basis as the heirs or representatives of deceased applicants for other kinds of mineral leases where no third-party interests require consideration.

George W. Wright, Sr. (Deceased), 22 IBLA 280 (Oct. 30, 1975)

Statement of Reasons

A contractor's petition to reopen and conduct an evidentiary hearing after an adverse decision of its appeal, which was decided on the record without an oral hearing, was denied where the petition, treated as a motion for reconsideration, not only failed to satisfy the newly discovered evidence rule but also failed to disclose the evidence which would be proffered at the hearing and thus furnished no reason for vacating the original decision.

Appeal of COAC, Inc., IBCA-1004-9-73 (Feb. 19, 1975) 82 I.D. 65

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons therefor within the time allowed.

W. R. Williamson, 19 IBLA 6 (Feb. 20, 1975)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 20 IBLA 19 (Apr. 16, 1975)

Duncan Miller, 21 IBLA 21 (June 16, 1975)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal is subject to summary dismissal where a statement of reasons is not timely filed. A statement of reasons in support of an appeal which does not point affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

J. Bernard Roberts, 21 IBLA 204 (July 30, 1975)

A contractor's motion for reconsideration is denied where the contractor offered to provide evidence on one claim item which was obtained after the Board's adverse decision but which could have been obtained, in the exercise of due diligence, before the hearing and where other evidence offered on all claim items was in the contractor's possession at the time of the hearing and no valid reason was given for the failure to introduce such evidence. The motion for reconsideration is not a vehicle for correction of errors or omissions by a party in the presentation of its case.

Appeal of Robert P. Jones, Contractor, IBCA-1002-8-73 (Aug. 6, 1975)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

Thurman Banks, et al., 22 IBLA 205 (Oct. 15, 1975)

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed and the appeal will be dismissed.

Richard E. and Phyllis Lee, 22 IBLA 284 (Oct. 30, 1975)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error, does not meet the requirements of the Department's rules of practice and may be dismissed.

Duncan Miller, 22 IBLA 336 (Nov. 11, 1975)

An appeal to the Board of Land Appeals is subject to summary dismissal when appellant fails to file a statement of reasons in support of his appeal.

Hathern Lewis Stacy, 23 IBLA 166 (Dec. 24, 1975)

APPEALS--Continued

Timely Filing

Where request for reconsideration of Bureau of Land Management 1968 homesite decision is taken in 1974, appellant stating he was never served with decision, but where receipt in record shows service in 1968, reconsideration should be denied.

Hollis E. Justis, 21 IBLA 63 (June 25, 1975)

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal. A notice of appeal, although received within the 10-day grace period, but not transmitted within the 30-day period following service of the decision, is not timely filed and must be dismissed.

Shelley Anne Trainor, 21 IBLA 326 (Aug. 14, 1975)

EVIDENCE

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, any issue in doubt as to discovery raised by the evidence must be resolved against the party having the risk of nonpersuasion, the mining claimant. If a mining claimant fails to show by a preponderance of the evidence as to such issue that there has been a discovery of a valuable mineral deposit he has not satisfied his burden of proof and an Administrative Law Judge must declare the claim invalid, rather than leave the question of the claim's validity unresolved.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

In a mining contest a mining claimant is the true proponent under the Administrative Procedure Act, 5 U.S.C. § 556(d), of a rule or order that he has complied with the mining laws, and he has the ultimate burden of proof -- the risk of nonpersuasion -- to show by a preponderance of the evidence that there is a valuable mineral deposit on the claim, when the Government has made a prima facie case of lack of such a discovery.

EVIDENCE--Continued

Evidence submitted on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted. However, such evidence will only be considered if accompanied by a cogent explanation of why it was not tendered at the hearing.

United States v. Charles J. MacIver, et al., 20 IBLA 352 (June 11, 1975)

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

Southern Pacific Company, heirs of George H. Wedekind, 20 IBLA 365 (June 12, 1975)

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact and there is no chance of development of further material facts which would require a different decision.

Beulah Moses, 21 IBLA 157 (July 21, 1975)

An evidentiary hearing will be denied where the information supplied by the applicant shows, as a matter of law, that the requirements of the statute have not been met.

Warner Bergman, 21 IBLA 173 (July 25, 1975)

A lack of sales of a mineral of widespread occurrence, such as sand and gravel, may raise a presumption that there was no demand for the mineral during that time, and, hence, the material was not marketable. The presumption may be overcome with credible evidence to the contrary or by bona fides in development.

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted. However, such evidence will only be considered if accompanied by a cogent explanation of why it was not tendered at the hearing.

United States v. C. V. Hallenbeck, et al., 21 IBLA 296 (Aug. 11, 1975)

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

A contractor's parol evidence rule objection to the admission in evidence of the answer given to a question raised at a prebidding conference as set forth in a contemporaneous Government memorandum is overruled where the Board finds that the answer given simply reflects information contained in the invitation for bids on which the contract is based.

Appeal of J. A. LaForte, Inc., IBCA-1014-12-73 (Sept. 29, 1975) 82 I.D. 459

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from a rejection of a Native allotment application in the absence of a satisfactory showing why the evidence was not submitted to Bureau of Land Management within the period afforded the applicant for the submission of such evidence.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly

RULES OF PRACTICE--Continued

EVIDENCE--Continued

showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Company (a/k/a Iconco), IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

GOVERNMENT CONTESTS

The ultimate burden of proof to show a discovery of a valuable mineral deposit is always upon the mining claimant. However, if the Government in a mining contest fails to present a prima facie case and the contestees move to dismiss the case and rest, the contest complaint must be dismissed because there would be no evidentiary basis for an order of invalidity.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

Where the Government has made a prima facie case of lack of discovery in a mining contest, any issue in doubt as to discovery raised by the evidence must be resolved against the party having the risk of nonpersuasion, the mining claimant. If a mining claimant fails to show by a preponderance of the evidence as to such issue that there has been a discovery of a valuable mineral deposit he has not satisfied his burden of proof and an Administrative Law Judge must declare the claim invalid, rather than leave the question of the claim's validity unresolved.

Where a contestee in a mining contest preponderates sufficiently to overcome the Government's prima facie case on an issue raised by the evidence in a mining contest and there is no evidence on other essential disputed issues, the contest should be dismissed unless a patent application is being contested, in which case a further hearing must be ordered to resolve other essential issues to determine whether the application may be allowed.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

The doctrine of res judicata will not bar an administrative proceeding to determine the validity of three unpatented mining claims where, in a previous condemnation action for the War Department's taking of a temporary exclusive easement covering the claims, the judgment of the federal district court was limited solely to the compensation to be paid by the United States, and there was no litigation of the issue of the validity of the claims and no prior adjudication of that issue in the Department of the Interior.

GOVERNMENT CONTESTS--Continued

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimants concerning the validity of the claims with the intention that the claimants should act in reliance thereon, with the result that the claimants were thereby induced to do so, to their ultimate damage.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of three mining claims which were the subject of a previous condemnation action for the taking by the Government of a temporary exclusive easement over the claims, where the issue of the validity of the claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

The Department of the Interior has jurisdiction, in proper proceedings, to determine the validity of mining claims on federal lands.

United States v. A. B. Fleming, et al., 20 IBLA 83 (Apr. 24, 1975)

HEARINGS

Where the party bearing the risk of nonpersuasion does not appear at a hearing ordered pursuant to 43 CFR 4.415, that party's appeal is properly dismissed.

Stanley G. West, 18 IBLA 337 (Jan. 10, 1975)

While a mining contest is within the jurisdiction of an Administrative Law Judge, he may reopen the hearing for the production of further evidence before he makes his decision.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975)
82 I.D. 68

Evidence submitted on appeal after an initial decision in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing in a mining contest may be ordered where the particular circumstances so warrant it.

United States v. Howard S. McKenzie, 20 IBLA 38 (Apr. 17, 1975)

Where at a hearing held pursuant to sec. 2 of the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(b) (1970), the mining claimant, prior to the taking of any evidence, enters into a stipulation

HEARINGS--Continued

while laboring under confusion as to the effect of the stipulation, and the stipulation legally precludes all forms of placer mining on his claim, the decision below relying on the stipulation will be reversed and the case remanded for a full hearing on the merits.

Dwight Brooks, 20 IBLA 100 (Apr. 25, 1975)

An evidentiary hearing will be denied where the facts are not in issue and there is no chance of development of further facts not already of record upon which a decision may be predicated.

Ann McNoise, David Lee Opheim, Martha Anderson, 20 IBLA 169 (May 7, 1975)

James S. Picnalook, Sr., Mabel Bullard, 22 IBLA 191 (Oct. 15, 1975)

In a hearing on a patent application filed under the Transportation Act of 1940, 49 U.S.C. § 65(b) (1970), the Government has the obligation of making a prima facie case of mineral character between the date the railroad line was definitely located and the date of purchase, whereupon the applicant has the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Company, Heirs of George H. Wedekind, 20 IBLA 365 (June 12, 1975)

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the state's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact and there is no chance of development of further material facts which would require a different decision.

Beulah Moses, 21 IBLA 157 (July 21, 1975)

An evidentiary hearing will be denied where the information supplied by the applicant shows, as a matter of law, that the requirements of the statute have not been met.

Warner Bergman, 21 IBLA 173 (July 25, 1975)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Applicants under the Alaska Native Allotment Act do not have a right to a formal hearing before an Administrative Law Judge. However, a hearing may be ordered in the discretion of the Secretary of the Interior.

Elsie Bergman, Walter Titus, Steven Bergman, 22 IBLA 233 (Oct. 22, 1975)

An evidentiary hearing will be denied where there are no facts in dispute and only legal issues are involved.

Herman Haakanson, 23 IBLA 54 (Dec. 4, 1975)

An applicant for a Native allotment has no right to a hearing, and none is required where there is no offer of proof which indicates that the findings of the State Office were incorrect, or where an offer of evidence is unaccompanied by a satisfactory explanation why it was not submitted to the State Office within the time provided.

Alexandra Atchak, 23 IBLA 81 (Dec. 12, 1975)

PRIVATE CONTESTS

A private contest brought against an Alaskan homestead entry charging that the entryman failed to meet the minimum cultivation requirements for the second entry year must be dismissed when it is disclosed that such information was of record in the Bureau of Land Management office at the time the complaint was filed.

Olan W. Christie v. Larry E. O'Glesbee, 23 IBLA 155 (Dec. 23, 1975)

PROTESTS

The assignor of an oil and gas lease is not barred from protesting against a decision approving the assignment because of his failure to appeal from an earlier decision denying the assignee's request for assignment approval but stating that approval would be permitted upon performance of certain conditions.

When an assignment of an oil and gas lease, made prior to lease renewal, has been approved after renewal and thereafter it appears that there is a controversy whether the parties contemplated that the assignment of the base lease would extend to the renewal lease, the Department will not take action on a protest requesting rescission of the assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

Joseph Alstad, 19 IBLA 104 (Mar. 4, 1975)

RULES OF PRACTICE--Continued

PROTESTS--Continued

Where there is a private dispute as to the validity or effect of an oil and gas lease assignment, the Bureau of Land Management will not take action on a request for assignment approval, but will maintain the status quo for a period sufficient to permit the parties to institute litigation or take other action to resolve their dispute.

James V. O'Kane, F. Kenneth Millhollen, 19 IBLA 171 (Mar. 18, 1975)

Where a desert land applicant, whose application is prior in time, appeals from a decision of the Bureau of Land Management, dismissing his protest against affording priority to a later-filed desert land application on the basis that the earlier-filed application was incomplete, the cases are properly remanded to the Bureau of Land Management for action on the respective applications, so as to avoid piecemeal adjudication.

George M. Crapo, Richard L. Crapo, 19 IBLA 208 (Mar. 21, 1975)

WITNESSES

A motion for remand of a mining claim contest for further hearing on the grounds of prejudicial surprise, based upon Government counsel's failure to supplement interrogatory answers listing witnesses and exhibits as ordered in lieu of prehearing conference, will be denied where contestee's counsel ignored repeated offers of continuance made at various stages of the hearing.

United States v. Theresa B. Robinson, 21 IBLA 363 (Aug. 25, 1975) 82 I.D. 414

A claim for acceleration under a contract for the construction of footings for a transmission line is denied where one of appellant's principal contentions was that in a telephone conversation following record snow in late September the project engineer had directed that men and equipment be added to the job in order to finish the work by the contract completion date of Nov. 1, but in correspondence conducted with the Government for almost 6 months after such telephone conversation the contractor failed to refer to the directions purportedly received from the project engineer and even failed to reference the particular telephone conversation. Actions taken by the Government's principal inspector were also found not to constitute acceleration orders when the evidence clearly showed that both parties viewed the inspector's action as involving suggestions rather than directions and that whether the suggestions were accepted by the contractor's job superintendent depended upon the exercise of his business judgment.

Appeal of Iversen Construction Company (a/k/a Iconco), IBCA-981-1-73 (Dec. 30, 1975) 82 I.D. 646

SCHOOL LANDS

GRANTS OF LAND

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

MINERAL LANDS

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

Where, after Statehood, a designated school section is surveyed and returned as mineral land (coal) known to be mineral in character prior to the date when the rights of the State would have attached, and where prior to the Act of Jan. 25, 1927 (44 Stat. 1026), the land is withdrawn for national forest purposes, title to the section did not pass to the State.

Malcolm N. McKinnon, 23 IBLA 1 (Nov. 25, 1975)

SCRIP
(See also Soldiers' Additional Homesteads)

PAYMENT IN SATISFACTION

Transfers of scrip or selection rights which are presented to the Department of the Interior for recordation pursuant to the Scrip Recordation Act more than six months after they were made cannot be accepted for recording or serve as a basis for the acquisition of lands. An application to elect to receive cash rather than land, which is based upon a transfer of a soldier's additional homestead selection right filed more than six months after it was made, must be rejected.

Where an applicant to receive cash in satisfaction of a soldier's additional homestead selection right fails to establish a complete chain of title from the soldier-entryman to the applicant, a purported assignment of the right to the applicant cannot be recognized and the application must be rejected.

Margaret W. Chivers, 21 IBLA 124 (July 14, 1975)

SCRIP--Continued

RECORDATION

Transfers of scrip or selection rights which are presented to the Department of the Interior for recordation pursuant to the Scrip Recordation Act more than six months after they were made cannot be accepted for recording or serve as a basis for the acquisition of lands. An application to elect to receive cash rather than land, which is based upon a transfer of a soldier's additional homestead selection right filed more than six months after it was made, must be rejected.

Margaret W. Chivers, 21 IBLA 124 (July 14, 1975)

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney in fact of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

SPECIAL TYPES OF SCRIP

An application for satisfaction of forest lieu selection rights filed after Dec. 31, 1969, will be rejected, as all such claims which had not been satisfied on that date, or for which no satisfaction had been demanded, expired by operation of law.

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney in fact of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

VALIDITY

Where an applicant to receive cash in satisfaction of a soldier's additional homestead selection right fails to establish a complete chain of title from the soldier-entryman to the applicant, a purported assignment of the right to the applicant cannot be recognized and the application must be rejected.

Margaret W. Chivers, 21 IBLA 124 (July 14, 1975)

SCRIP--Continued

VALIDITY--Continued

An application for satisfaction of forest lieu selection rights filed after Dec. 31, 1969, will be rejected, as all such claims which had not been satisfied on that date, or for which no satisfaction had been demanded, expired by operation of law.

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney in fact of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

Ben Cohen, Ray C. Nordstrom, 21 IBLA 330 (Aug. 18, 1975)

SECRETARY OF THE INTERIOR

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands require extension or correction of past surveys.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated and the rights of the public preserved.

Richard B. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

A departmental regulation promulgated pursuant to and comporting with statutory authority has the force and effect of law. One who exercises the delegated authority of the Secretary may not disregard the plain and unambiguous provisions of a mandatory regulation so as to impose a more onerous requirement on an applicant than is prescribed by the regulation in effect.

Arizona Public Service Company, 20 IBLA 120 (Apr. 25, 1975)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

Chester H. Ferguson, et al., 20 IBLA 224 (May 13, 1975)

SECRETARY OF THE INTERIOR--Continued

A regulation defining "eligible refiners" under the Act of July 13, 1946, providing for the sale of Government royalty oil or gas to owners of existing refineries (including refineries not in operation) who qualify as a small business enterprise under the rules of the Small Business Administration and who are unable to purchase in the open market an adequate supply of crude oil to meet the needs of their existing refinery capacities, is an implementation of the Act within the ambit of the Secretary of the Interior's authority to prescribe rules and regulations.

Thunderbird Resources, Inc., 20 IBLA 248 (May 16, 1975)

Where a Native allotment applicant has used the land applied for only for hunting, trapping and fishing and there are no improvements on the land, it is proper in the exercise of the Secretary's discretionary authority to reject the application to the extent it conflicts with a special land use permit issued to the Alaska Fish and Game Department for scientific purposes.

Gregory Anelon, Sr., 21 IBLA 230 (Aug. 1, 1975)

Before relief may be granted to the lessee of a terminated oil and gas lease, he must comply with the prerequisites set forth in 30 U.S.C. § 188 (1970). The Secretary has no authority to waive such statutory prerequisites.

C. J. Iverson, 21 IBLA 312 (Aug. 14, 1975)
82 I.D. 386

The execution of special stipulations as a condition precedent to issuance of oil and gas leases for land located in a national forest may be required at the discretion of the Secretary of the Interior in order to protect environmental and other land use values. The need for the stipulation should be clear and the stipulation should be a reasonable means to the intended purpose. The Forest Service's recommended stipulations will be carefully considered by the Department, but the final authority for oil and gas leasing on public domain land rests in this Department.

Earl R. Wilson, 21 IBLA 392 (Aug. 27, 1975)

The execution of special stipulations as a condition precedent to the issuance of oil and gas leases for land located in national forests may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Bill J. Maddox, 22 IBLA 97 (Sept. 22, 1975)

SECRETARY OF THE INTERIOR--Continued

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect identifiable resource values as a condition precedent to issuance of an oil and gas lease. Stipulations proposed by the Forest Service will be carefully considered by this Department, but the final decision for oil and gas leasing on public domain land rests with this Department. A "no surface occupancy" stipulation proposed in order to protect a recreation area cannot stand if it might preclude surface occupancy unreasonably beyond the boundaries of the recreation area.

Beverley Lasrich, 22 IBLA 202 (Oct. 15, 1975)

The Secretarial instruction of Oct. 18, 1973, which mandates a showing by a Native allotment applicant of 5 years of occupancy prior to a withdrawal of the land, was not required to be published as rulemaking since 5 U.S.C. § 553(a)(2) (1970) exempts from its ambit matters pertaining to public property.

Heirs of Dorothy Gordon, 22 IBLA 213 (Oct. 15, 1975)

The Secretarial guideline of Oct. 18, 1973, that a Native allotment application should be rejected when the applicant fails to show 5 years of use and occupancy prior to a withdrawal of the land: (a) is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970); and (b) is a proper exercise of the discretion vested in the Secretary by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970), the application of which does not violate any right of the allotment applicant.

Herman Joseph (On Reconsideration), 22 IBLA 266 (Oct. 30, 1975)

SEGREGATION

FILING OF APPLICATION

The date of the segregation from settlement, caused by the filing of a State selection application in the appropriate office of the Bureau of Land Management, is not tantamount to the "effective date" of "[a] withdrawal or reservation" described in the Secretarial directive of Oct. 18, 1973. Therefore, Native use and occupancy commenced before such segregation may continue, unhampered by such segregation, to gain the requisite five years' use and occupancy required under 43 U.S.C. §§ 270-1 to 270-3 (1970).

Victor A. Anahonak, 21 IBLA 347 (Aug. 18, 1975)

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

SETTLEMENTS ON PUBLIC LANDS

A homestead notice of location filed for lands open to location is acceptable for recordation. Where a homestead settler has marked the corners of his claim by posts prior to a withdrawal subject to valid existing rights, the claim survives the withdrawal if the location notice requirements have been satisfied.

Robert A. Bice, Jr., 22 IBLA 291 (Nov. 3, 1975)

SMALL TRACT ACT

GENERALLY

Where land was subject to a mining claim at the time a small tract classification order withdrew the land from mineral entry and the mining claim was thereafter declared null and void, a subsequent transferee of the mining claim has no standing to object to the order classifying the land under the Small Tract Act.

Richard B. and Shirley A. Jarrett, 19 IBLA 78 (Feb. 27, 1975)

Where a Public Land Order withdraws land from all forms of appropriation under the public land laws for proper classification of the lands under Alaska Native Claims Settlement Act and for protection of public interest values, but provides that the withdrawn lands are subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to grant leases, an application for Small Tract lease accompanied by a petition for classification may be accepted for filing by the Bureau of Land Management. Ultimate disposition of the application will be dependent upon the classification of the land involved.

Elizabeth A. Sharp, 19 IBLA 312 (Apr. 7, 1975)

It is not an abuse of the Secretary's discretion under the Small Tract Act to offer a renewable five-year lease instead of fee title where it appears that the latter form of tenure would interfere with proper resource development and management programs.

Edward W. Kirk, Beatrice Anne Kirk, Ralph Hevener, Ramona F. Hevener, 20 IBLA 156 (May 5, 1975)

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

SMALL TRACT ACT--Continued

GENERALLY--Continued

Where a decision fixes a small tract rental derived from an appraisal report which does not comport with Departmental standards, the decision will be set aside and the case remanded for a new appraisal to establish the fair rental value.

Junction Oil Company, Inc., 21 IBLA 78 (June 25, 1975)

APPLICATIONS

Where a Public Land Order withdraws land from all forms of appropriation under the public land laws for proper classification of the lands under Alaska Native Claims Settlement Act and for protection of public interest values, but provides that the withdrawn lands are subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to grant leases, an application for Small Tract lease accompanied by a petition for classification may be accepted for filing by the Bureau of Land Management. Ultimate disposition of the application will be dependent upon the classification of the land involved.

Elizabeth A. Sharp, 19 IBLA 312 (Apr. 7, 1975)

APPRAISALS

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay in reappraising the land prior to issuance of patent. The mere filing of a small tract application does not create in the applicant any right or interest in the land.

Where the current fair market value of land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

George D. Jackson, 20 IBLA 253 (May 16, 1975)

Where a decision fixes a small tract rental derived from an appraisal report which does not comport with Departmental standards, the decision will be set aside and the case remanded for a new appraisal to establish the fair rental value.

Junction Oil Company, Inc., 21 IBLA 78 (June 25, 1975)

LANDS SUBJECT TO

Land along the Lower Colorado River which has been designated in a land use plan approved by the Secretary of the Interior as a public recreation area is not subject to disposal under the Small Tract Act of June 1, 1938, 43 U.S.C. § 682a (1970).

John Paul Hinds, Ruth M. Hinds, 18 IBLA 385 (Jan. 31, 1975)

SOLDIERS' ADDITIONAL HOMESTEADS

GENERALLY

Since the statute authorizing cash payment to the holder of soldiers' additional rights requires that an applicant for such payment must give written notice to the Secretary of the Interior of his election to receive such payment prior to Jan. 1, 1975, an application received on Jan. 2, 1975, must be rejected.

J. Sidney Rood, 20 IBLA 319 (June 4, 1975)

Transfers of scrip or selection rights which are presented to the Department of the Interior for recordation pursuant to the Scrip Recordation Act more than six months after they were made cannot be accepted for recording or serve as a basis for the acquisition of lands. An application to elect to receive cash rather than land, which is based upon a transfer of a soldier's additional homestead selection right filed more than six months after it was made, must be rejected.

Where an applicant to receive cash in satisfaction of a soldier's additional homestead selection right fails to establish a complete chain of title from the soldier-entryman to the applicant, a purported assignment of the right to the applicant cannot be recognized and the application must be rejected.

Margaret W. Chivers, 21 IBLA 124 (July 14, 1975)

SPECIAL USE PERMITS

The Bureau of Land Management, in the exercise of its discretionary power to issue special land use permits, may establish special fee assessments for off-road vehicle (ORV) events.

The filing of an application for a special land use permit does not vest in the applicant any rights which preclude the Bureau of Land Management from requiring compliance with fee assessments adopted after the date of such filing but before issuance of the permit. In the absence of a provision that pending applications are to be exempted from the effects of the change in fee requirements, the applicant must comply with the fee assessment in effect at the time of the issuance of the special land use permit.

An applicant's special land use permit application does not fall within the "firm commitment" exception of a Bureau of Land Management instruction memorandum requiring revised fee assessments for off-road vehicle (ORV) permits where, subsequent to issuance and notice of the memorandum, the application is still in the preliminary processing stage requiring additional pre-event meetings, the applicant's acceptance of special stipulations, and further staff investigation and review before approval; however, the case will be remanded for further consideration where the District Office decision does not determine whether the application falls within the memorandum exception which permits the honoring of "negotiations which have progressed too far to negate * * *."

Walt's Racing Association, 18 IBLA 359 (Jan. 30, 1975)

SPECIAL USE PERMITS--Continued

Where a special land use permit application to use land in support of various military programs, as an impact area for all types of air delivered items including parachute drops, arms firing, and inert items dropped from dispensers, is rejected, on the basis that the issuance of a renewal permit could result in undue risk to the safety of the public, without the preparation of an environmental impact analysis and without consideration of possible limitations upon use, the case will be remanded for such action.

Flight Systems, Inc., 19 IBLA 58 (Feb. 25, 1975)

The issuance of a special land-use permit is discretionary, and the Bureau of Land Management may reject a special land-use permit application when the proposed use would adversely affect the public interest, and may offer, in the alternative, a permit providing for use consonant with proper management of national resource lands.

Jerry Tecklin, Leonard Brackett, 20 IBLA 308 (May 30, 1975)

An applicant's special land use permit application does not fall within a Bureau of Land Management instruction memorandum exception which permits the honoring of past "negotiations which have progressed too far to negate," in lieu of the new revised fee assessment required by the memorandum for off-road vehicle events, where at the time of issuance and notice of the memorandum only preliminary negotiations had occurred which could still be negated.

Walt's Racing Association, 22 IBLA 238 (Oct. 22, 1975)

The issuance of a special land use permit by the Bureau of Land Management is clearly discretionary, but the Bureau may not issue a permit when the provisions of existing laws may be invoked to provide for the proposed use. However, if a withdrawal of the lands in issue precludes the invocation of such provisions, a permit may be granted if consistent with the public interest. Where the land has been withdrawn by Executive Order No. 6206 of July 16, 1933, for the protection of the water supply of the City of Los Angeles, and the City objects to the issuance of a permit for agricultural purposes, but does not show why it objects, the case will be remanded to develop the facts and for further appropriate consideration.

Edward L. Butterworth, 23 IBLA 136 (Dec. 23, 1975)

STATE GRANTS

The Secretary of the Interior is authorized and under a duty to determine what lands are public lands and to survey such lands. Neither the Acts admitting Florida into the Union, nor the Reconstruction Act of March 2, 1867, divested the Secretary of the Interior of that authority regarding islands in the State of Florida, nor divested the United States of title to any public lands in the State.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

STATE GRANTS--Continued

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

STATE SELECTIONS
(See also School Lands, Swamplands)

A selection application by the State of Alaska must be rejected where all of the applied for land is withdrawn from State selection.

State of Alaska, 18 IBLA 351 (Jan. 15, 1975)

Lands withdrawn by sec. 11(a)(1) & (2) of the Alaska Native Claims Settlement Act are subject to selection by qualified native villages notwithstanding the prior tentative approval of selections of those lands by the State of Alaska pursuant to the Statehood Act.

Where the State of Alaska had received tentative approval of a land selection and had granted a patent to a third party in accordance with § 6(g) of the Alaska Statehood Act, and where the state patent was granted before the enactment of the Alaska Native Claims Settlement Act, with the express approval of the various native groups then concerned, a native village may not later select those lands pursuant to the Alaska Native Claims Settlement Act, as a valid third party right to the land had already been created.

Where statute and regulation provide that lands selected by the State of Alaska must be surveyed before patent can issue, but no similar requirement has been imposed as a precondition to the conveyance of lands selected pursuant to the Alaska Native Claims Settlement Act, the State's contention that this disparity is discriminatory will not afford a basis for reversing a decision which rejected a state selection application in favor of a conflicting native village selection.

The fact that filing fees are required as a condition precedent for state selections and are not required for native village selections pursuant to the Alaska Native Claims Settlement Act is not a basis for vacating a decision awarding lands to the native villages.

State of Alaska, 19 IBLA 178 (Mar. 18, 1975)

The allowance of a state selection application furthers the discharge of the federal obligation to fulfill the State's statutory entitlement and, generally, it will be preferred in the public interest over the discretionary application of one who does not have an entitlement of equal dignity.

STATE SELECTIONS--Continued

The denial of a petition for classification and the rejection of an application under the Recreation and Public Purposes Act for a lease of lands which have been withdrawn and which are also subject to a state selection application, which, under the terms of the withdrawal order, may be allowed, does not violate the tenets of due process because the disposition of the petition application is at the discretion of the Secretary, and the petitioner applicant has no vested right protected by constitutional guarantees or by the Administrative Procedure Act.

Mountaineering Club of Alaska, Inc., 19 IBLA 198 (Mar. 19, 1975)

The filing of a State selection under the Alaska Statehood Act does not create a right that prevents a Native village from selecting those lands under the terms of the Alaska Native Claims Settlement Act.

State of Alaska, 19 IBLA 242 (Mar. 27, 1975)

Under 43 CFR 2091.6-4 and 2562.1(d) a notice of location for a trade and manufacturing site is unacceptable for recordation where the land is not subject to that form of disposition because it has been segregated by state selection applications.

Lloyd Schade, 19 IBLA 251 (Mar. 31, 1975)

The filing of a State selection application under sec. 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, 48 U.S.C. notes prec. § 21 (1970), does not create a right that prevents a Native Village from selecting those lands under the provisions of the Alaska Native Claims Settlement Act of Dec. 18, 1971, 85 Stat. 688, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973).

Whether Village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973), constitute an unwarranted vitiation of the State selection provisions of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

STATE SELECTIONS--Continued

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

An application filed by a State under the Act of Mar. 5, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act of 1894 must be rejected where the lands are withdrawn for stock-driveway purposes, and cannot be suspended pending consideration of a petition for reclassification of the lands as suitable for selection under the Carey Act.

A grant of lands to a State under the Carey Act of 1894 is not a grant in praesenti, vesting title to any particular lands as of the time of passage of the Act or by relation back upon fulfillment of the conditions imposed by the Act, but the allowance or rejection of an application by a State under the Act of Mar. 5, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act is a matter wholly within the discretion of the Department; and where the lands sought to be selected by the State are embraced within a stock-driveway withdrawal made by the Secretary of the Interior under authority of law, they are not, so long as such withdrawal remains in force, subject to any claim of the State under the Carey Act.

Idaho Department of Water Resources, 21 IBLA 210 (July 31, 1975)

The allowance of a state selection application furthers the discharge of the federal obligation to fulfill the State's statutory entitlement and, generally, it will be preferred in the public interest over the discretionary application of one who does not have an entitlement of equal dignity.

C. Burglin, et al., 21 IBLA 234 (Aug. 11, 1975)

The notation on land office records of a noncompetitive oil and gas lease application does not prevent the State of Alaska from selecting the land pursuant to the Alaska Statehood Act.

Yukon Service, Inc., 22 IBLA 220 (Oct. 15, 1975)

A headquarters site claim is invalid when occupancy of the site was initiated more than 90 days prior to the filing of a notice of location and an intervening state selection application has segregated the land.

William G. Fairbanks, 22 IBLA 255 (Oct. 23, 1975)

STATE SELECTIONS--Continued

The filing of an amended Alaska State Selection, after a prior trade and manufacturing site claim for which a notice of location was recorded is canceled and closed of record but where the cancellation has not been posted on the records, segregates the land it describes from further appropriations based on application or settlement and location.

Margaret L. Klatt, Allan D. Klatt, 23 IBLA 59 (Dec. 11, 1975)

STATUTORY CONSTRUCTION

GENERALLY

Although there may be no general rule for distinguishing between mandatory and directory provisions, a statute should be construed according to its subject matter and the purpose for which it was enacted, and the intention of the legislature should be controlling.

To deny status as an eligible village to persons in fact entitled to that status would be an unjust and unfair denial of a right specifically granted by Congress, as evidenced in the legislative history.

Authority to Determine Eligibility of Native Villages After June 18, 1974, M-36877 (Jan. 7, 1975) 82 I.D. 14

Whether Village selections authorized by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973), constitute an unwarranted vitiation of the State selection provisions of the Alaska Statehood Act, 48 U.S.C. notes prec. § 21 (1970), and of the Compact of Admission to the Union, is beyond the consideration of this Board.

State of Alaska, 19 IBLA 316 (Apr. 7, 1975)

In providing for allocation of rents, royalties and bonuses between the United States and a State in proportion to their ownership of a mineral lease partly within and partly without a numbered school section, the Congress intended for producing mineral leases to be included within the exceptions set out in the amendatory Act of July 11, 1956, 30 U.S.C. § 870(d) (1970).

State of Utah, 22 IBLA 44 (Sept. 15, 1975)

ADMINISTRATIVE CONSTRUCTION

The two and one-half year time limitation set forth by Congress in sec. 11(b)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (b)(2), for the determinations of village eligibility, is an estimate of time reasonable enough to accomplish the basic purposes of that section of the Act.

Authority to Determine Eligibility of Native Villages After June 18, 1974, M-36877 (Jan. 7, 1975) 82 I.D. 14

STATUTORY CONSTRUCTION--Continued

LEGISLATIVE HISTORY

To deny status as an eligible village to persons in fact entitled to that status would be an unjust and unfair denial of a right specifically granted by Congress, as evidenced in the legislative history.

Authority to Determine Eligibility of Native Villages After June 18, 1974, M-36877 (Jan. 7, 1975) 82 I.D. 14

SURFACE RESOURCES ACT

GENERALLY

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

United States v. Clarion W. Taylor, Sr., and Gerald O'Connor, 19 IBLA 9 (Feb. 20, 1975) 82 I.D. 68

SURPLUS PROPERTY
(See also Federal Property and Administrative Services Act)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Paradox Oil and Gas Company, 22 IBLA 242 (Oct. 22, 1975)

SURVEYS OF PUBLIC LANDS

GENERALLY

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands require extension or correction of past surveya.

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose becauae of avulsion rather than accretion and so the land is not in fact federally owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Where statute and regulation provide that lands selected by the State of Alaska must be surveyed before patent can issue, but no similar requirement has been imposed as a precondition to the conveyance of lands selected pursuant to the Alaska Native Claims Settlement Act, the State's contention that this disparity is discriminatory will not afford a basis for reversing a decision which rejected a state selection application in favor of a conflicting native village selection.

State of Alaska, 19 IBLA 178 (Mar. 18, 1975)

Although the Secretary of the Interior may survey any public lands which have been erroneously omitted from a survey, a plat of survey, once accepted, is presumed to be correct and will not be disturbed except upon clear proof of fraud or gross error; in the absence of such proof an application for survey of omitted land is properly rejected.

George C. Matthews, 19 IBLA 215 (Mar. 24, 1975)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

A patent of land from the United States conveys only land which is surveyed, and when the surveyors have carried a survey only to a certain line, a grantee may not successfully challenge the correctness of their action or claim land beyond that line under a patent issued in accordance with that survey.

Generally, the meander line is not to be treated as a boundary and when the United States conveys a tract of land by patent referring to an official plat which shows the tract to be bordering on a navigable body of water, the patent conveys all the land to the water line. However, there are three situations in which meander lines will serve as the boundary of a conveyance or grant, rather than a water body: namely, where there is (1) fraud or (2) gross error shown in the survey, or (3) where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

The Bureau of Land Management acted appropriately in surveying an omitted area of 18.17 acres of land as compared to the original area of surveyed land of 17.52 acres where it found that area of omitted land to be too large to be regarded as merely a technical difference from the original survey. Such a discrepancy is unquestionably a large enough omission to be classified as either gross error or fraud in the original survey.

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

A survey of a previously unsurveyed portion of an island, proved to have been in existence in 1876 when an original survey was conducted in the area, is proper and shall be officially filed where the record shows that the plat of survey reflects the true location of the island on the surface of the earth and was conducted in accordance with both the Manual of Survey Instructions and the special instructions for this conditional survey.

Chester H. Ferguson, et al., 20 IBLA 224 (May 13, 1975)

A protestant against the filing of a survey plat bears the burden of proof, i.e., the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant state has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the state under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, i.e., the risk of nonpersuasion, in the proceeding.

The survey of an offshore island without the use of 18.6-year mean high tide data, which governs boundary disputes between private upland and tideland owners, is proper; the 18.6-year lunar cycle tide data does not govern meander lines established in public land surveys.

Meander of an offshore island is ordinarily based on a mean high tide determined by the vegetative line upon the soil in accordance with the Bureau of Land Management's Manual of Surveying Instructions.

The meandering of the public land of an offshore island is properly based on a mean high tide line established at the vegetative line upon the soil, in accordance with the provisions of the Bureau of Land Management's Manual of Surveying Instructions, and a protest against the filing of a plat of survey based on such a mean high tide line is properly rejected.

Demonstration that the field notes accompanying the plat of survey inaccurately or incompletely recite the history of the lands surveyed does not require rejection of the survey or field notes, when it is not disputed that the field notes accurately describe the evidence of the history of settlement and use visible during examination and survey, and when it is concluded that the survey itself was properly executed.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

There can be no "valid existing right" in a claimant of a headquarters site on land withdrawn by Public Land Order No. 4582 unless a notice of location or application to purchase had been filed in accordance with the Act of Apr. 29, 1950. The filing of an application for a survey of omitted land did not by itself create any preference rights to the land.

URVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Notices of location for headquarters sites must be accepted for filing by the authorized Bureau of Land Management office if the land has been subject to location during the preceding 90 days. The fact that land had been omitted from the original survey is not a valid reason for the Bureau of Land Management to refuse to record a properly filed notice of location for a headquarters site.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

AUTHORITY TO MAKE

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands require extension or correction of past surveys.

Joe S. Dent and Delores L. Dent, 18 IBLA 375 (Jan. 30, 1975)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

Chester E. Ferguson, et al., 20 IBLA 224 (May 13, 1975)

The Secretary of the Interior is authorized and under a duty to determine what lands are public lands and to survey such lands. Neither the Acts admitting Florida into the Union, nor the Reconstruction Act of March 2, 1867, divested the Secretary of the Interior of that authority regarding islands in the State of Florida, nor divested the United States of title to any public lands in the State.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

DEPENDENT RESURVEYS

A class 1 color of title application for lands classified upon dependent resurvey as omitted swamp and overflowed lands must be rejected when the applicants' 20-year period of peaceful adverse possession under color of title had not been established at the date title vested in the State under the provisions of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970).

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS--Continued

An appeal from a decision rejecting a color of title application will stay the running of the 60-day period, provided by the decision appealed from, for filing affidavits and evidence in support of arguments that the dependent resurvey of the land applied for erroneously classified the land as swamp and overflowed in character.

Paul H. and Fay L. Sleeper, 22 IBLA 318 (Nov. 10, 1975)

SWAMPLANDS

A protestant against the filing of a survey plat bears the burden of proof, i.e., the risk of nonpersuasion, to show why the plat should not be accepted, and the applicant state has the burden of demonstrating that land is swamp and overflowed in character. The protestant against the filing of a survey plat who claims that title to the land passed to the state under the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), is properly assessed with the burden of proof, i.e., the risk of nonpersuasion, in the proceeding.

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the state's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

The United States is not estopped to assert title to, survey, or deny the swamp and overflowed character of public lands constituting offshore islands in Florida either by Departmental inaction on the State's swampland application, or by inclusion of the islands in a swampland selection list, or by the survey protestants' adverse chain of title and claims of occupancy and use.

Demonstration that the field notes accompanying the plat of survey inaccurately or incompletely recite the history of the lands surveyed does not require rejection of the survey or field notes, when it is not disputed that the field notes accurately describe the evidence of the history of settlement and use visible during examination and survey, and when it is concluded that the survey itself was properly executed.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

A class 1 color of title application for lands classified upon dependent resurvey as omitted swamp and overflowed lands must be rejected when the applicants' 20-year period of peaceful adverse possession under color of title had not been established at the date title vested in the State under the provisions of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970).

SWAMPLANDS--Continued

An appeal from a decision rejecting a color of title application will stay the running of the 60-day period, provided by the decision appealed from, for filing affidavits and evidence in support of arguments that the dependent resurvey of the land applied for erroneously classified the land as swamp and overflowed in character.

Paul H. and Fay L. Sleeper, 22 IBLA 318 (Nov. 10, 1975)

TIDELANDS

The survey of an offshore island without the use of 18.6-year mean high tide data, which governs boundary disputes between private upland and tideland owners, is proper; the 18.6-year lunar cycle tide data does not govern meander lines established in public land surveys.

Meander of an offshore island is ordinarily based on a mean high tide determined by the vegetative line upon the soil in accordance with the Bureau of Land Management's Manual of Surveying Instructions.

In a hearing held to determine whether lands were swamp and overflowed at the time of the Swamp Lands Act, 43 U.S.C. §§ 981-986 (1970), the parties asserting the state's title fail to meet their burden of proof when the evidence submitted indicates that the mangrove area claimed as swampland is in fact below the line of mean high tide, and was properly delineated from the upland by the meander line.

The meandering of the public land of an offshore island is properly based on a mean high tide line established at the vegetative line upon the soil, in accordance with the provisions of the Bureau of Land Management's Manual of Surveying Instructions, and a protest against the filing of a plat of survey based on such a mean high tide line is properly rejected.

Virgil Lopez, et al., 21 IBLA 33 (June 17, 1975)

TIMBER SALES AND DISPOSALS

A request for extension of a timber sale contract is properly denied where the purchaser has not shown that its delay in cutting and removal was due to causes beyond its control. A business depression is no excuse within the "beyond control" exceptions contained in the exculpatory clause of a contract.

Yuba River Lumber Co., Inc., 19 IBLA 65 (Feb. 25, 1975)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

GENERALLY

A hearing will not be held on a relocation assistance appeal where the facts are not in dispute and resolution of the appeal rests primarily upon an interpretation of law and where it does not appear that any additional evidence would be produced at a hearing to warrant any change in the decision from which the appeal is taken.

Uniform Relocation Assistance Appeal of South Cold Springs Friends Sand Church, 1 OHA 110 (Apr. 14, 1975)

The Act does not provide for the replacement of business property condemned by and acquired by the United States and the Park Service has no authority to provide other park land as a replacement for the acquired property.

A claim for damage incidental or otherwise to real property remaining in the landowner after the acquisition of part of his property by the United States is properly denied on the basis that the Act and implementing regulations do not provide for such damage or incidental damage payments.

Uniform Relocation Assistance Appeal of S. S. Shedd, 1 OHA 125 (June 20, 1975)

Land purchase contracts which involve negotiations and agreement between the parties are transactions separate and distinct from relocation assistance payments and benefits under the Act which are made administratively by acquiring agencies in accordance with administrative regulations and procedures established under provisions of the Act, and neither the price for which an appellant's property was acquired by voluntary conveyance nor the accuracy of appraisals and the soundness of determinations involving just compensation paid to others whose property was similarly acquired by voluntary conveyance to the United States for the same project are reviewable upon appeal.

Uniform Relocation Assistance Appeal of John E. Houston, 1 OHA 157 (Aug. 8, 1975)

Claims for reimbursement for travel time to and from replacement property to sign options for the purchase of replacement property and to accompany a carpenter for the purposes of estimating building costs are properly denied on the basis that the Act and implementing regulations do not provide for such payment.

A claim for reimbursement for travel time to check on legal matters regarding replacement property is properly denied on the basis that the Act and implementing regulations do not provide for such payments.

A claim for reimbursement for travel time to bank to get money to make payment on replacement property is properly denied on the basis that the Act and implementing regulations do not provide such payments.

GENERALLY--Continued

A claim for reimbursement for cost of paying neighbor to guard personal property or a claim for reimbursement for appellants' time spent guarding their property is properly denied on the basis that the Act and implementing regulations do not provide for such payments.

A claim for reimbursement for travel time to meet with attorney and judge for a pretrial conference held in conjunction with the trial which related to the condemnation case involving the acquired land is properly denied on the basis that the Act and implementing regulations do not provide for such payments.

A claim for reimbursement for travel time and legal expenses incurred in perfecting the appellants' appeal under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, are properly denied on the basis that the Act and implementing regulations do not provide for such payments.

An appealed case will not be remanded to the Director of the acquiring bureau where there are facts sufficient to support a final determination of the case.

Uniform Relocation Assistance Appeal of William and Mary Danneman, 1 OHA 170 (Sept. 18, 1975)

A claim for reimbursement for increased interest payments with respect to a replacement farm property is properly denied on the basis that the Act and implementing regulations did not provide for such payments.

Uniform Relocation Assistance Appeal of S. R. Jennings, 1 OHA 218 (Sept. 19, 1975)

Where appellants moved from acquired property prior to the effective date of the Act they are not displaced persons within the meaning of the Act and they are not eligible to receive relocation assistance benefits under the Act.

Uniform Relocation Assistance Appeal of Harold W. and Willomene Olsen, 1 OHA 221 (Sept. 24, 1975)

A claim for reimbursement for the cost of a survey of the remainder of appellant's land after acquisition by United States of part of appellant's land is properly denied on the basis that the Act and implementing regulations do not provide for such payment.

Uniform Relocation Assistance Appeal of Carl A. Lundberg, 1 OHA 226 (Oct. 14, 1975)

A claim for reimbursement for travel time and legal expenses incurred in perfecting the appellants' appeal under the Relocation Assistance and Real Property Acquisition Policies Act of 1970 is properly denied on the basis that the Act and implementing regulations do not provide for such payments.

GENERALLY--Continued

An appeal case will not be remanded to the Director of the acquiring bureau where there are facts of record sufficient to support a final determination of the case.

Uniform Relocation Assistance Appeal of Edward and Josephine Kobba, 1 OHA 229 (Nov. 13, 1975)

UNIFORM REAL PROPERTY ACQUISITION POLICY

Expenses Incidental to Transfer of Title to the United States

Real property taxes referred to in sec. 303(3) of the Act and implementing regulations refer only to the pro rata portion of real property taxes allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier.

The Uniform Relocation Assistance Appeal of Mrs. Eve I. Rich, 1 OHA 121 (June 5, 1975)

UNIFORM RELOCATION ASSISTANCE

Generally

Persons who had moved from their dwelling on real property acquired by the United States and discontinued farming operations on the lands and who were residing elsewhere at the time negotiations were initiated for the purchase of the lands and had been residing elsewhere for more than 180 days prior to initiation of such negotiations, are not persons who moved or discontinued a farm operation on the acquired lands as a result of the acquisition of the real property by the United States; and, therefore, they are not displaced persons entitled to relocation assistance benefits within the meaning of the law and the implementing regulations.

Uniform Relocation Assistance Appeal of Bobby Wayne Jennings and Helen Jennings, 1 OHA 78 (Jan. 7, 1975)

Moving and Related Expenses

Generally

Benefits under the Act and implementing regulations do not include reimbursement for moving and related expenses in removing a house and a barn from the acquired lands where those structures were purchased as part of the realty acquired by the United States and they were removed under authority of a provision in the deed of conveyance which reserved to the grantor for s certain term the right to the use and occupancy of said buildings and the right to remove said buildings from the land without damage to the land itself.

Uniform Relocation Assistance Appeal of Fritz and Lucille J. Ackley, 1 OHA 163 (Sept. 2, 1975)

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

For the purposes of determining whether or not appellants are entitled to payment for expenses incurred in searching for a replacement business location, the question of whether one is engaged in a trade or business is one of fact to be determined by the totality of the evidence presented.

A claim by appellant for reimbursement for his own time spent with moving appraisers is properly denied on the basis that the Act and implementing regulations do not provide for such payment.

Claims for reimbursement for time spent disassembling or assembling equipment or supervising movers in loading or unloading where professional mover is paid for such services but appellant gratuitously performs same are properly denied on the basis that the Act and implementing regulations do not provide for such payment.

A claim by appellants for reimbursement for their own time placing their belongings under cover at acquired site is properly allowed where commercial movers quit job without explanation leaving property exposed and it is necessary to cover appellants' property in order to prevent rain or vandalism damage.

A claim by appellant for reimbursement for his own time disassembling wiring, removing electrical hookups, removing water pipes, and removing underground wiring for lights is properly allowed where commercial mover was not hired to do electrical or plumbing work and this work was necessary to move the appellants' personal property.

Claims for the cost of improvements to the replacement dwelling other than those improvements required by law are properly denied on the basis that the regulations implementing the Act prohibit the payment of such claims.

Uniform Relocation Assistance Appeal of William and Mary Danneman, 1 OHA 170 (Sept. 18, 1975)

For the purposes of determining whether or not appellants are entitled to payment for expenses incurred in searching for a replacement farm location, the question of whether the acquired farm operation contributed materially to the appellants' support is one of fact to be determined by the totality of the evidence presented.

Uniform Relocation Assistance Appeal of Edward and Josephine Kobbs, 1 OHA 229 (Nov. 13, 1975)

A claim for moving and related expenses involved in packing and unpacking household furnishings herself, by a displaced person who is not otherwise employed outside her home, is properly reduced to conform with the Federal minimum wage for such work where

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

it appears that the amount claimed exceeds the probable cost of such services by a commercial mover and no evidence has been presented which would justify allowance of a higher amount as actual reasonable expenses incurred by the displaced person in such activity.

Uniform Relocation Assistance Appeal of Sergeant and Mrs. Michael H. Ireland, 1 OHA 256 (Dec. 3, 1975)

Moving Expense Allowance

Payment for Moving Expenses

Generally

A claim for the cost of moving nursery stock consisting of unsevered plants and trees is properly denied under regulation which precludes expense of moving improvements to real property where, under applicable state law, nursery stock is considered real property until it is severed.

Uniform Relocation Assistance Appeal of William and Mary Danneman, 1 OHA 170 (Sept. 18, 1975)

A claim for personal property lost, stolen or damaged (not caused by the fault or neglect of the displaced person, his agent or employees) in the process of moving where insurance to cover such loss or damage is not available was properly allowed under Interim Regulation 8.A.(7).

Uniform Relocation Assistance Appeal of Edward and Josephine Kobbs, 1 OHA 229 (Nov. 13, 1975)

Payments in Lieu of Moving and Related Expenses

Fixed Payment

Partial Taking of Farm Operation

A claim for a fixed payment in lieu of actual moving and related expenses is properly disallowed in the case of a partial acquisition of a farm operation where the farm met the definition of a farm operation prior to the acquisition and the property remaining after the acquisition also meets that definition.

Uniform Relocation Assistance Appeal of David Martin Grantham, 1 OHA 130 (July 2, 1975)

A claim for a fixed payment in lieu of actual moving and related expenses is properly disallowed in case of a partial acquisition of a farm operation where the farm met the definition of a farm operation prior to the acquisition and the property remaining after the acquisition also meets that definition.

Uniform Relocation Assistance Appeal of S. R. Jennings, 1 OHA 218 (Sept. 19, 1975)

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses --Continued

Fixed Payment--Continued

Taking of Business Operation

Displaced business owner may claim reimbursement for property abandoned because of the uneconomical cost of moving or property sold because the business is discontinued under sec. 202(a) of the Act or a fixed payment in lieu thereof under sec. 202(c) of the Act but not both.

In computing average annual net earnings of business operation for purposes of determining the amount of fixed relocation payment to which the claimant is entitled under sec. 202(c) of the Act by reason of displacement from the business operation, the utilization of the last one-year period of operation, rather than the last two years, should be used for establishing such earnings where there is a wide disparity between the earnings of the last year of operation of the business and the year preceding if it is further shown that the business has been very recently expanded in capacity and to use the earnings for the last year would result in more equitable treatment for the displaced owner of the business.

Uniform Relocation Assistance Appeal of S. S. Shedd, 1 OHA 125 (June 20, 1975)

A claim for a fixed relocation business payment in lieu of actual moving and related expenses is properly disallowed where the record shows the property did not qualify as an on-going business operation at the time of its acquisition nor for a period of approximately 15 years prior to that time.

Uniform Relocation Assistance Appeal of John E. Houston, 1 OHA 157 (Aug. 8, 1975)

Payments in Lieu of Moving and Related Expenses

A claim by a church for a fixed payment in lieu of actual reasonable moving and related expenses is properly allowed on the same basis as provided in § 202(c) of the Act and implementing regulations for displacement from other nonprofit organizations and businesses.

Uniform Relocation Assistance Appeal of South Cold Springs Friends Band Church, 1 OHA 110 (Apr. 14, 1975)

Replacement Housing Payment for Homeowners

A claim by a church for a relocation housing supplement payment is properly denied where the land acquisition did not involve displacement from residential housing as provided in § 203 of the Act.

Uniform Relocation Assistance Appeal of South Cold Springs Friends Band Church, 1 OHA 110 (Apr. 14, 1975)

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

When it appears that the replacement housing cost differential payment authorized by the Bureau under subsec. 203(a)(1)(A) of the Act represents an amount which, when added to the acquisition cost of the dwelling acquired, meets the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary, and adequate to accommodate the displaced person, the Bureau determination will be affirmed.

Uniform Relocation Assistance Appeal of Clyde L. and Eva G. Stark, 1 OHA 115 (June 3, 1975)

Where it is indicated that the Duluth Land Acquisition Officer of the National Park Service agreed to use of the schedule method for determining replacement housing supplement benefits under § 203(a)(1)(A) of the Act, in purchase negotiations and upon acceptance of the offer to sell and acquisition of the property for the Park Service, prior to transfer of functions of that office to the Chesterton, Indiana, office of the Park Service, subsequent action of the Chesterton Land Acquisition Officer to review the previous decision and to recompute the allowable replacement housing supplement payment under the comparative method will not prevail, even though the claim for benefits was filed in the Chesterton Office after the transfer of functions was accomplished; and the claim will be allowed on the basis first agreed upon, all else being regular.

Where the reasonable acquisition cost for a comparable replacement dwelling, computed under the schedule method, exceeds the acquisition cost of the acquired dwelling in an amount over $15,000, allowable benefits will be limited to the maximum housing cost differential of $15,000 provided in § 203(a)(1) of the Act.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Alden W. Wilkin, Sr., 1 OHA 137 (July 15, 1975)

Replacement housing benefits are properly denied where the dwelling on the acquired property was not occupied by the owner for the minimum period of 180 days immediately prior to the initiation of negotiations for acquisition of the property.

Uniform Relocation Assistance Appeal of John E. Houston, 1 OHA 157 (Aug. 8, 1975)

Appellants' cost differential entitlement is properly increased to include cost of repairs necessary to make replacement dwelling decent, safe and sanitary so long as the total cost differential payment does not exceed the statutory limitation of $15,000.

Uniform Relocation Assistance Appeal of William and Mary Danneman, 1 OHA 170 (Sept. 18, 1975)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

A claim for a dwelling differential payment was properly allowed under Interim Regulation 3.G. where the acquired dwelling is a mobile home if the mobile home was the permanent abode of the displaced person, was real property under state law, or could not be moved without substantial damage or without unreasonable cost and was actually owned and occupied by the displaced person not less than 180 days prior to the initiation of negotiations.

Uniform Relocation Assistance Appeal of Edward and Josephine Kobbs, 1 OHA 229 (Nov. 13, 1975)

Replacement Housing Payment for Tenants and Certain Others

Replacement housing payments allowable under § 204(2) of the Act and implementing regulations to enable a displaced tenant to make a down payment and to cover his reasonable expenses for evidence of title, recording fees, and other closing costs, on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in an area not generally less desirable in regard to public utilities and commercial and public facilities, do not include payments in the form of a building grant or a low interest mortgage, and a claim for such benefits is properly denied.

Uniform Relocation Assistance Appeal of James R. Wilmot, 1 OHA 86 (Feb. 12, 1975)

Sec. 204(2) of the Act, which provides for replacement housing payments to displaced tenants to enable them to make a down payment and to cover allowable incidental expenses as described in § 203(a)(1)(C) of the Act, but not in excess of $4,000, requires that such displaced persons must match any amount in excess of $2,000 by an equal amount of their own funds.

Uniform Relocation Assistance Appeal of Benjamin F. Gallagher, 1 OHA 106 (Feb. 24, 1975)

WILD AND SCENIC RIVERS ACT

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area under sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1276(d) (1970), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

John Oakason, Beard Oil Company, 19 IBLA 191 (Mar. 18, 1975)

WILD AND SCENIC RIVERS ACT--Continued

Oil and gas lease offers embracing lands within an area under consideration as a potential wild and scenic river area pursuant to sec. 5(d) of the Wild and Scenic Rivers Act, 16 U.S.C.A. § 1276(c) (Supp. 1975), or within adjacent areas having special resource values which might be damaged by oil and gas leasing may be properly rejected in the exercise of the Secretary's discretion in leasing.

Rosita Trujillo, 21 IBLA 289 (Aug. 11, 1975)

WILDERNESS ACT

National forest public lands which have not been withdrawn from oil and gas leasing but are under study by the Forest Service as a proposed wilderness area are available for leasing in the discretion of, and under conditions imposed by, the Secretary of the Interior. Such discretion is not properly exercised when the Bureau of Land Management rejects an offer solely upon the recommendation of the Forest Service that land is a "candidate" for a proposed wilderness area without making an independent determination that leasing, with appropriate protective stipulations, is or is not in the public interest.

Esdras K. Hartley, 23 IBLA 102 (Dec. 23, 1975)

WILDLIFE REFUGES AND PROJECTS

GENERALLY

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended.

"Waterfowl production areas" are within the meaning of "wildlife refuge lands" in 43 CFR 3101.3-3(a) and, therefore, are subject to the prohibition against oil and gas leasing (except where drainage is involved) contained in 43 CFR 3101.3-3(a)(1).

T. R. Young, Jr., 20 IBLA 333 (June 11, 1975)

The prohibition in 43 CFR 3101.3-3(a)(1) against leasing for oil and gas in wildlife refuge lands, except where there is drainage, applies to areas withdrawn for waterfowl production, even though the withdrawal order did not prohibit leasing. Offers for such lands and lakebeds riparian thereto are properly rejected.

A. G. Golden, 21 IBLA 76 (June 25, 1975)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Settlement on a homestead claim in Alaska two days prior to a withdrawal of the land does not except the land from the withdrawal where the claimant failed to file his notice of location within 90 days after settlement as required by the Act of Apr. 29, 1950, 64 Stat. 94, 43 U.S.C. §§ 270, 270-5, 270-6 (1970), and his notice is properly held to be unacceptable for recordation.

Gary Lee Slay, 18 IBLA 345 (Jan. 14, 1975)

A selection application by the State of Alaska must be rejected where all of the applied for land is withdrawn from State selection.

State of Alaska, 18 IBLA 351 (Jan. 15, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III, 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Rene P. Lamoureux, 20 IBLA 243 (May 16, 1975)

Withdrawn lands and lands closed to nonmineral entry are not open to appropriation under the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970). No rights may be initiated under the Alaska Native Allotment Act by occupation and use of lands not open to appropriation.

Anna Opheim, Chris Roy Opheim, Philip Katelnikoff, 20 IBLA 290 (May 27, 1975)

Oil and gas lease offers embracing lands withdrawn or reserved for any agency of the Department of Defense may not be granted without the consent of that Department. 43 U.S.C. § 158 (1970). Such lease offers must be rejected where such consent is withheld as inconsistent with the military use, and the offers may not be suspended to await the possible availability of the lands for leasing.

Mobil Oil Corporation, 20 IBLA 296 (May 27, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

The Secretary's authority to withdraw public lands is separate from, and in addition to, the Secretary's discretionary authority under sec. 17 of the Mineral Leasing Act of 1920, as amended. Therefore, public lands which are described in a public land order as not withdrawn from leasing under the mineral leasing laws remain subject to sn exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended.

T. R. Young, Jr., 20 IBLA 333 (June 11, 1975)

A claimant's occupancy of a homesite prior to a withdrawal does not establish a "valid existing right," excepted by the withdrawal, under the Act of Apr. 29, 1950, where claimant did not file his notice of location within 90 days after occupancy, nor did he file a notice of location or purchase application prior to the withdrawal.

Knute P. Lind, 21 IBLA 81 (June 27, 1975)

The date of the segregation from settlement, caused by the filing of a State selection application in the appropriate office of the Bureau of Land Management, is not tantamount to the "effective date" of "[a] withdrawal or reservation" described in the Secretarial directive of Oct. 18, 1973. Therefore, Native use and occupancy commenced before such segregation may continue, unhampered by such segregation, to gain the requisite five years' use and occupancy required under 43 U.S.C. §§ 270-1 to 270-3 (1970).

Victor A. Anahonak, 21 IBLA 347 (Aug. 18, 1975)

An applicant's opinion that a withdrawal has not served, or does not serve, any useful purpose does not vitiate the effect of the withdrawal to bsr appropriation of the land. Likewise, the extended period of time that a withdrawal has been in effect does not vitiate such impact.

Serafina Anelon, 22 IBLA 104 (Sept. 22, 1975)

There can be no "valid existing right" in a claimant of a headquarters site on land withdrawn by Public Land Order No. 4582 unless a notice of location or application to purchase had been filed in accordance with the Act of Apr. 29, 1950. The filing of an application for a survey of omitted land did not by itself create any preference rights to the land.

An application to purchase a headquarters site is subject to rejection if it is filed after the 5-year period from the filing of a notice of location of the claim, or, if no notice had been filed, it was filed more than 90 days after the land has been withdrswn.

Ray W. Ferguson, 22 IBLA 160 (Sept. 30, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated * * *." Pending final action on the matter, public lands are not open to Indian allotment settlement and disposition following the filing and noting of an application by the Bureau of Land Management for a proposed withdrawal; regulation 43 CFR 2091.2-5(a) provides that the noting of an application for withdrawal on the official plats maintained in the proper land office shall temporarily segregate the subject land from settlement under the public land laws to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal. Following issuance of a public land order withdrawing the subject land, Indian allotment applications previously held in a suspense status are properly rejected.

Thurman Banks, et al., 22 IBLA 205 (Oct. 15, 1975)

Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

Donald J. Thomas, 22 IBLA 210 (Oct. 15, 1975)

Mining claims are properly declared null and void ab initio where they are located on land which, on the date of location, was included in an application for withdrawal which previously had been noted on land office records.

John Boyd Parsons, 22 IBLA 328 (Nov. 10, 1975)

Location of a homesite claim without substantial use or occupancy of the land in compliance with the law creates no property interest in the land. Where the claimant under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687(a) (1970), has merely marked the boundaries of the claim prior to a withdrawal of the land, such activity does not constitute occupation or possession of the land and the claim will be defeated by that withdrawal.

Edward P. Dooley, 22 IBLA 338 (Nov. 14, 1975)

AUTHORITY TO MAKE

The Government may withdraw lands occupied by Alaskan natives under alleged aboriginal possessory rights and thus preclude such lands from disposition under the Native Allotment Act.

Louis P. Simpson, et al., 20 IBLA 387 (June 16, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF

On petition for reconsideration, the assertion of rights to a mining claim under an Aug. 1968 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in Oct. 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

Lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (Supp. III, 1973), are withdrawn from all forms of appropriation under the public land laws, including, without limitation, the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-3 (1970), and an application under the latter Act for such withdrawn lands is properly rejected.

Alaska Department of Fish and Game, 20 IBLA 50 (Apr. 23, 1975)

Under the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), a notice of location of a trade and manufacturing site filed after withdrawal of the land is acceptable if it is filed within 90 days of settlement and the settlement occurs prior to a withdrawal of the land. An application to purchase based on such an asserted settlement and filing will be rejected when it is not filed within the statutory life of the asserted claim, but the applicant may be afforded an opportunity to submit a justification for his late filing under the principles of equitable adjudication.

Edwin William Seiler (On Reconsideration), 20 IBLA 221 (May 9, 1975)

Oil and gas lease offers embracing lands withdrawn or reserved for any agency of the Department of Defense may not be granted without the consent of that Department. 43 U.S.C. § 158 (1970). Such lease offers must be rejected where such consent is withheld as inconsistent with the military use, and the offers may not be suspended to await the possible availability of the lands for leasing.

Mobil Oil Corporation, 20 IBLA 296 (May 27, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

EFFECT OF--Continued

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

The Color of Title Act, 43 U.S.C. § 1068 (1970), applies only to public land, i.e., vacant, unappropriated, unreserved Federal real property subject to the public land laws. An application under the Act which is based upon color of title initiated when the subject land was withdrawn from the operation of the public land laws and reserved as national forest land must be rejected.

Ben J. Boschetto, 21 IBLA 193 (July 28, 1975)

A trade and manufacturing site location will be defeated where the law has not been substantially complied with before the land is withdrawn under statutory authority.

Elden L. Reese, 21 IBLA 251 (Aug. 11, 1975)

The date of the segregation from settlement, caused by the filing of a State selection application in the appropriate office of the Bureau of Land Management, is not tantamount to the "effective date" of "[a] withdrawal or reservation" described in the Secretarial directive of Oct. 18, 1973. Therefore, Native use and occupancy commenced before such segregation may continue, unhampered by such segregation, to gain the requisite five years' use and occupancy required under 43 U.S.C. §§ 270-1 to 270-3 (1970).

Victor A. Anahonak, 21 IBLA 347 (Aug. 18, 1975)

Withdrawn lands are not open to appropriation under the Native Allotment Act. An Alaska Native Allotment application is properly rejected where the applicant fails to show substantial use and occupancy at least potentially to the exclusion of others and not mere intermittent use.

An applicant's opinion that a withdrawal has not served, or does not serve, any useful purpose does not vitiate the effect of the withdrawal to bar appropriation of the land. Likewise, the extended period of time that a withdrawal has been in effect does not vitiate such impact.

Serafina Anelon, 22 IBLA 104 (Sept. 22, 1975)

Where land within a trade and manufacturing site is withdrawn from appropriation prior to its occupancy and use for purposes of trade or manufacture under 43 U.S.C. § 687a (1970) and 43 CFR Subpart 2562, the invalid claim cannot be perfected.

Allan D. Hodge, 22 IBLA 150 (Sept. 30, 1975)

EFFECT OF--Continued

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

State of Alaska, 22 IBLA 229 (Oct. 16, 1975)

A homestead notice of location filed for lands open to location is acceptable for recordation. Where a homestead settler has marked the corners of his claim by posts prior to a withdrawal subject to valid existing rights, the claim survives the withdrawal if the location notice requirements have been satisfied.

Robert A. Bice, Jr., 22 IBLA 291 (Nov. 3, 1975)

Under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), issuance of a grazing lease appropriates the lands and segregates them from public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from lease.

Edward F. Naughton, 23 IBLA 134 (Dec. 23, 1975)

An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment may not tack on use and occupancy of the land by his ancestors to establish the right. The applicant must have completed the 5-year period of use and occupancy prior to withdrawal of the land to qualify.

Sarah F. Lindgren, Emery V. Showalter, 23 IBLA 174 (Dec. 31, 1975)

POWER SITES

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970) (2) there are no intervening rights (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 et seq., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

POWER SITES--Continued

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

State of Alaska, 20 IBLA 341 (June 11, 1975)

Where an applicant for a Native allotment asserts use and occupancy of the land in 1959 and the land is included in an application for powersite withdrawal of the lands in 1963, and is withdrawn in 1965 for such purposes, the applicant has failed to demonstrate the five years' use and occupancy prior to the effective date of the withdrawal as required by the Secretarial directive of Oct. 18, 1973. This is based upon the finding that an application for power purposes, upon its filing, immediately withdraws the land pursuant to sec. 24 of the Federal Power Act, as amended, 16 U.S.C. § 818 (1970).

Herman Joseph, 21 IBLA 199 (July 30, 1975)

An Alaska Native allotment application is properly rejected where applicant fails to show five years substantial continuous use and occupancy prior to the closing of the land to native allotments. An allotment application is properly rejected when the land applied for is within a powersite withdrawal and initiation of use and occupancy was less than five years prior to the time the lands were closed.

Heirs of Charles E. Frank, et al., 21 IBLA 248 (Aug. 11, 1975)

An Alaska Native allotment application is properly rejected where applicant fails to show 5 years' substantially continuous use and occupancy prior to the closing of the land to Native allotments. An allotment application is properly rejected when the land applied for is within a powersite withdrawal and initiation of use and occupancy was less than 5 years prior to the time the lands were closed.

Leah Druck, 22 IBLA 253 (Oct. 22, 1975)

An Alaska Native allotment applicatioo is properly rejected where the applicant fails to demonstrate completion of 5 years of substantially continuous use and occupancy prior to an application for withdrawal of the land for power purposes.

Wayne C. Williams, 23 IBLA 88 (Dec. 16, 1975)

WITHDRAWALS AND RESERVATIONS--Continued

POWER SITES--Continued

A Native allotment may not be approved where the land applied for has been within a power site withdrawal long prior to the initiation of applicant's use and occupancy.

Davis Hobson, 23 IBLA 159 (Dec. 23, 1975)

RECLAMATION WITHDRAWALS

An application to make a homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Richard E. Crill, et al., 18 IBLA 428 (Feb. 14, 1975)

REVOCATION AND RESTORATION

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970) (2) there are no intervening rights (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 et seq., and to hold a hearing if required to resolve questions of fact.

Ralph Page, 19 IBLA 255 (Mar. 31, 1975)

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

State of Alaska, 20 IBLA 341 (June 11, 1975)

The Secretary of the Interior is without authority to withdraw or reserve lands or to revoke withdrawals and reservations affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned.

Robert B. Hughes, 22 IBLA 121 (Sept. 26, 1975)

RAWALS AND RESERVATIONS--Continued

STOCK-DRIVEWAY WITHDRAWALS

An application filed by a State under the Act of Mar. 5, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act of 1894 must be rejected where the lands are withdrawn for stock-driveway purposes, and cannot be suspended pending consideration of a petition for reclassification of the lands as suitable for selection under the Carey Act.

A grant of lands to a State under the Carey Act of 1894 is not a grant in praesenti, vesting title to any particular lands as of the time of passage of the Act or by relation back upon fulfillment of the conditions imposed by the Act, but the allowance or rejection of an application by a State under the Act of Mar. 5, 1910, for a temporary withdrawal of lands to aid in the selection of the lands for proposed development under the Carey Act is a matter wholly within the discretion of the Department; and where the lands sought to be selected by the State are embraced within a stock-driveway withdrawal made by the Secretary of the Interior under authority of law, they are not, so long as such withdrawal remains in force, subject to any claim of the State under the Carey Act.

Idaho Department of Water Resources, 21 IBLA 210 (July 31, 1975)

WORDS AND PHRASES

Hold." Any person or entity which has acquired actual possession and the right thereof to more than 320 acres of desert lands "holds" such acreage within the meaning of the prohibition of sec. 7 of the Act of Mar. 3, 1877, as amended.

United States v. G. Patrick Morris, et al., 19 IBLA 350 (Apr. 7, 1975) 82 I.D. 146

"Hold, assignment and otherwise." Sec. 7 of the Act of Mar. 3, 1891, provides that no person or association of persons shall hold by assignment or otherwise, prior to the issue of patent, more than 320 acres of arid or desert lands; the terms "hold," "assignment" and "otherwise" are words of broad significance and will be defined in such manner to effectuate the purposes of the Act, to wit, to prevent anyone from holding more than 320 acres of desert lands to the exclusion of bona fide settlers or the entryman of record.

"Holding." Any person or association of persons who controls, possesses and receives substantial benefits from desert lands will be regarded as "holding" such lands within the meaning of the Act of Mar. 3, 1891.

United States v. Golden Grigg, et al., 19 IBLA 379 (Apr. 7, 1975) 82 I.D. 123

"Lands." The term "lands" can be construed as covering mineral interests constructively severed from the surface estate.

General Crude Oil Company, 19 IBLA 245 (Mar. 28, 1975)

WORDS AND PHRASES--Continued

"Otherwise." As used in sec. 7 of the Act of Mar. 3, 1877, as amended, "no person or association of persons shall hold by assignment or otherwise * * *," "otherwise" is not limited to other means equivalent to assignment but rather embraces all mechanisms whereby control of and benefit from an entry or entries are accumulated and transferred.

United States v. G. Patrick Morris, et al., 19 IBLA 350 (Apr. 7, 1975) 82 I.D. 146

"Public Land." The term "public land" can only be defined in context, and is not a term of art having specific legal effect. Usually, however, it means the general public domain, unappropriated land; land belonging to the United States and which is subject to sale or other disposal under the general laws, and not reserved or held back for any special governmental or public purpose.

Ben J. Boschetto, 21 IBLA 193 (July 28, 1975)

"Rentals." Reasonable diligence in sending a rental payment due on the anniversary date includes transmitting the payment so that it will normally be received in the appropriate office on the anniversary date considering the method of transmission, normal delays in handling, and the distance involved.

"Rentals." Failure to pay advance rentals on or before the anniversary date may be justifiable only if the reason for such failure is proximate in time to the anniversary date and may reasonably be considered to be the proximate cause of the failure to submit the payment on time.

M. J. Harvey, Jr., 19 IBLA 230 (Mar. 25, 1975)

"Shall be subject to cancellation." Where a regulation recites that a right-of-way "shall be subject to cancellation" for violation of its terms and conditions, the authorized officer is invested with the discretion to cancel or not, depending upon the circumstances.

State of Alaska, Department of Highways, 20 IBLA 261 (May 19, 1975) 82 I.D. 242

"Two Consecutive Years." The term "two consecutive years" in 43 CFR 4115.2-1(e)(9) means two consecutive application years from the date established by a district manager as the deadline for filing grazing applications.

John Hudspeth, 21 IBLA 91 (June 27, 1975)

"Will be subject to renewal." Where a regulation recites that a mineral lease "will be subject to renewal" under certain circumstances, the authorized officer is vested with the discretion to renew the lease or not, depending upon the circumstances.

Apache Oro Company, 22 IBLA 331 (Nov. 11, 1975)

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